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SENATE RULES COMMITTEE  
STATE OF CALIFORNIA

*Legislative*



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STATE OF CALIFORNIA



APPEARANCESMEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR JIM ELLIS

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

SENATOR WILLIAM CRAVEN, Vice Chairman

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

GLORIA ALLRED

DONALD A. RUSTON, Attorney  
Lewis, D'Amato, Brisbois & Bisgaard  
902 No. Grand Avenue, Suite 202  
Santa Ana, CA 92701

THOMAS J. COLEMAN, JR., Director  
Legal Services  
The Gay and Lesbian Community Services Center  
Los Angeles

PHIL BLAZER, Publisher  
National Jewish News





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P R O C E E D I N G S

--oo0oo--

CHAIRMAN ROBERTI: The next item on the agenda is consideration of the payment of the settlement in the case of Allred versus Schmitz.

The Rules Committee has received a request for payment of a judgment rendered against former Senator Schmitz -- excuse me, of a settlement between Senator Schmitz and Ms. Allred. He has requested the Rules Committee payment of that settlement, and we have making Senator Schmitz's request for him, we have Mr. Ruston, Senator Schmitz's attorney.

MR. RUSTON: Thank you, Senator Roberti.

CHAIRMAN ROBERTI: I might also point out that this hearing was scheduled before we knew Senator Craven, obviously, was going to be ill. So Senator Petris has requested for Senator Craven that the vote take place when Senator Craven is here and there is a full Committee. I suspect that will also be August 3rd.

Mr. Ruston.

MR. RUSTON: Senators, I know that we've been here before and that we've had hearings before on this particular matter.

I'm going to assume for the moment that you do have the letter that I sent to the Rules Committee, dated February 26, 1988, which I addressed to Mr. Berg as the Executive Officer.

Actually, this matter, as I have indicated there, the settlement that was arrived at by oral statements before Judge





2  
1 Savage, which was then announced in open court. It was a  
2 settlement that was arrived at at a time when I was representing  
3 Senator Schmitz and also was attempting to work out a settlement  
4 wherein there would be no claims of any liability by Brad Evans,  
5 Gloria Allred, or anyone else, against the Senate of the State of  
6 California.

7 You may recall at that time, I was representing both the  
8 Senate and Senator Schmitz, but of course, the Senate was not a  
9 party to the litigation since only Senator Schmitz was sued as a  
10 Defendant.

11 Very briefly, and simply to bring it into focus because  
12 of something that I am going to point out in the letter, and I  
13 have a copy of that Code section if it need be, and that is that  
14 this case against Senator John Schmitz and Brad Evans, both of  
15 whom were employees of the State of California -- Senator Schmitz  
16 being a Senator at the time, and Brad Evans being an Aide who was  
17 employed in the committee out of which this press release came,  
18 and which, incidentally, was not authored by Senator Schmitz but  
19 by Brad Evans -- and it was only later, as you'll recall,  
20 Ms. Allred was saying later that she claims there would be  
21 liability to Senator Schmitz by ratification.

22 This lawsuit started first with a claim and then a  
23 demand. The demand being one that was made with regard to  
24 defense being provided by the Senate, which you'll recall was  
25 taken up, and an opinion was solicited from the Legislative  
26 Counsel. Thereafter, it was agreed that Senator Schmitz would be  
27 provided with a defense. And you'll recall also that there was a  
28 lawsuit brought by a taxpayers' group challenging that.





1           Thereafter, there was another lawsuit brought after I  
2 came into this case several years later with the Court making the  
3 same ruling; namely, that the Senate had acted properly, and they  
4 did owe a defense to Senator Schmitz.

5           When the settlement was arrived at, there had been no  
6 trial; there has never been a trial; there has never been a  
7 determination of liability.

8           I have been an attorney now for, what, about 33-34  
9 years. I've tried hundreds of cases. And if I had to try every  
10 case that I had, the court simply wouldn't function. Ninety some  
11 odd percent of all cases are settled. It is an integrity of our  
12 courts; it's a very important part.

13           In this particular instance, I recommended that this  
14 settlement be made, and that this Committee give me authority to  
15 settle the case because I envisioned a great deal of expense, far  
16 greater than the amount paid in settlement, and I was given that  
17 authority.

18           With the cooperation of John Schmitz in issuing his  
19 apology, that settlement was made. And I've sent along to you --  
20 at least I sent it by Mr. Gregory, your Legislative Counsel, so  
21 that it would be here for anyone to see -- the hearing that was  
22 had with regard to settlement and the hearings that have been had  
23 subsequently, including the one where the Judge specifically  
24 stated that when the case was settled, it was his understanding  
25 the money was going to be paid by the Senate through the Rules  
26 Committee.

27  
28





1 I have pointed out in my letter of February 26th, 1988,  
2 Government Code Section 825. Now, regardless of the merits of  
3 this case one way or the other if it had gone to trial, where a  
4 defense is being provided by a governmental entity, where a  
5 settlement is made, or where a judgment comes in, the Section  
6 provides that the governmental entity is obliged to pay that  
7 settlement or judgment.

8 The only demand that I make, the only request that I  
9 make on behalf of Senator Schmitz, is that all of the other  
10 avenues that I have to take in order to protect Senator Schmitz  
11 -- appeals, possible other lawsuits -- be ended, and that  
12 Government Code Section 825 be adhered to, and the \$20,000 be  
13 paid by the governmental entity, namely, the State of California  
14 through the Senate, and more specifically, through the Rules  
15 Committee.

16 The settlement was made with the approval of the  
17 Committee. The Judge has now been forced, after he had made an  
18 order which he rescinded because he didn't have jurisdiction, to  
19 reduce this to a judgment, so that we have now both a settlement  
20 and a judgment on that settlement in the case, so that it falls  
21 under both provisions of Government Code Section 825.

22 I do believe that this has been around for some time. I  
23 have copies of my letter of the 26th, in which I set out the  
24 Government Code Section. In the event you don't have it, I've  
25 made enough for each Member of the Committee. I think, though,  
26 you're probably familiar with it. I know at least some of you  
27 are lawyers, undoubtedly familiar with it.  
28



1 I think it's simply a matter of bringing this to a  
2 conclusion, because I believe that the law, as enacted by the  
3 Legislature of the State of California in Government Code Section  
4 825, is mandatory.

5 CHAIRMAN ROBERTI: Thank you, Mr. Ruston.

6 The Members of the Committee have had this for about six  
7 or seven years, I can't remember. It's been a number of years.  
8 Through that time, there's been some disagreements on the  
9 Committee.

10 I think one of the problems is our recollections aren't  
11 the same. I tend to think -- and you weren't here at the time,  
12 you were commissioned after this decision was made -- but I tend  
13 to think that what I had thought the Committee did was to set the  
14 parameters for a settlement, and not a final settlement, and to  
15 set the parameters in order to limit whatever exposure to  
16 liability the Senate itself may have.

17 Also, the fact is that the Senate itself was not party  
18 to the suit. And I think everyone knew that the Senate was not  
19 party to the suit.

20 Now, Senator Petris' recollections and feelings on the  
21 matter are not mine. That is a problem that we're faced with.

22 I just raise that because you made that point as major  
23 part of your petition.

24 Another point is that, unlike payment of legal fees, the  
25 settlement itself, frankly, I think, is one that Senator Schmitz  
26 is quite able -- if his cause is correct, or if the law's in his  
27 favor, I think is a better way to put it -- can sue in court  
28





1 against us, and especially if you say it's mandatory. I would  
2 suspect he could sue in court against us; if we have a judgment,  
3 we will pay. There's no option.

4 But I'm speaking as one Member of the Committee. I just  
5 thought I'd raise that in response to the point that you're  
6 making.

7 MR. RUSTON: I respect that.

8 May I respond to both of those points?

9 CHAIRMAN ROBERTI: Yes.

10 MR. RUSTON: First, not only is it my belief, but  
11 Mr. Maroko, the partner of Gloria Allred and her attorney now in  
12 this matter, the last time we were in court indicated to the  
13 Judge that in fact authority had been given, and all I had to do  
14 was bring an action. It couldn't be opposed, and he would assume  
15 that it would go down as a judgment, and that I would have no  
16 difficulty, and the payment would be made.

17 The thing that I do not understand is, I suppose, I  
18 would have to file a claim with the Comptroller, which I'm  
19 prepared to do, but I've been waiting for the action on this.  
20 And I frankly don't want to do, because then it's only incurring  
21 more fees and expense.

22 I think that it is mandatory. I have, in the time that  
23 I have been practicing, represented over 60 or 70 governmental  
24 entities, and this is not the first time that I've had this case  
25 come down. I've represented the City of Anaheim since, what,  
26 1962. I have represented many other cities, governmental  
27 agencies and school districts. I believe that I am correct in  
28





1 this. I think the cases that I've looked at, it's correct. I  
2 think the language of the Section is correct.

3 Now with regard to the recollection, it was my  
4 understanding when I was in Judge Savage's Department and we were  
5 negotiating this that I was given authority. I communicated that  
6 an offer had been made and accepted. It was confirmed.

7 Further, after this, Senator Roberti, I have here  
8 something that was sent to me at that time confirming it, dated  
9 September 4, 1986, from the Senate Rules Committee, showing at  
10 that time yourself, as the Chairman, Senator Craven as the Vice  
11 Chairman, it then had Senator Doolittle, as opposed to Senator  
12 Ellis, Senator Mello and Senator Petris. I have a copy, in fact,  
13 I have several if you'd like to see it, which goes out to the  
14 Members of the Senate, explaining what had happened and saying  
15 that the settlement had been authorized and the reason for it.

16 CHAIRMAN ROBERTI: This was after the settlement.

17 I grant it's a memorandum, but it isn't from me.

18 MR. RUSTON: I'm not saying it had your signature.

19 CHAIRMAN ROBERTI: I don't myself feel bound by it;  
20 others may. But it's a memorandum of one person's understanding  
21 of what transpired.

22 As I said, that's the problem. We're in disagreement.

23 MR. RUSTON: I understand that, Senator Roberti.

24 CHAIRMAN ROBERTI: I appreciate you're an advocate, and  
25 I appreciate the difficulties that this thing has exposed you to.

26 MR. RUSTON: Senator Roberti, the reason that I bring  
27 this up is because of the fact that it was my understanding that  
28



1 I had the authority, or I never would have settled the case. The  
2 Court would not have accepted it. The case would not have been  
3 settled.

4 Further, when that was confirmed, I had what I thought  
5 was a confirmation by this, and no one had ever contradicted it  
6 to me as such. I assumed that I had always had the authority.  
7 The authority was there. That's the reason the agreement was  
8 made.

9 And certainly, there was never an agreement by Senator  
10 Schmitz that he would pay anything. It was always from the  
11 Senate.

12 Now, when there was some disagreement, as you know -- I  
13 think you know because I've informed Mr. Berg, and I've also  
14 informed Legislative Counsel, Bion Gregory, by keeping him  
15 apprised of what's going on -- I said that if in fact there is no  
16 settlement, then, because of the action that was done in this  
17 Committee when Ms. Allred appeared here and said, "Don't pay it;  
18 I'm not going to go in," you'll recall at that time I predicted  
19 that she would go in immediately and try to have it reduced to a  
20 judgment, which has been done. There was a settlement.

21 Now, if there wasn't, I said, then it shouldn't be  
22 reduced to a judgment. And the Court specifically said, that is  
23 Judge Savage said, based upon what happened before him, the  
24 settlement was made because he believed and was given the  
25 impression by everything that was said that the authority had  
26 been given to me, and the settlement was made. And that's  
27 exactly why we're here today.  
28





1           Now, if you'll look at my letter, and again I apologize  
2 because you may not have my letter with regard to that particular  
3 date that I'm talking about on the 26th, but if we go to the  
4 actual Section itself -- and I realize that I may be getting,  
5 perhaps, technical -- but the Section here does not say per se  
6 anything about authority, but it says if there has been a  
7 settlement where he is being defended, as he was by you, and has  
8 reasonably cooperated, then the governmental entity is bound to  
9 pay. And if there is a judgment, they are bound to pay.

10           Now, what the Judge has done here is, he's entered a  
11 judgment. And therefore, that's the reason I postulate to you  
12 that I believe that it's mandatory at this particular point.

13           I've been wrong in my career. You don't practice as  
14 long as I have without having been wrong now and then, and I've  
15 even been sued in my career.

16           But in this particular matter, we were all acting in  
17 good faith. I'm sure you were acting in good faith. But it has  
18 now been told to be a settlement by the Court. It's been reduced  
19 to a judgment, and I frankly think that under the Code Section,  
20 it should be paid. And because of the circumstances that arose  
21 and came about, even though she, Ms. Allred, may not want the  
22 money, that was the agreement that was made, and that's what the  
23 Judge, who participated in the settlement, and even as he stated  
24 in one of the hearings, suggested the language be changed because  
25 originally, I had insisted the language in the settlement be the  
26 \$20,000 be paid 'by and through' the Senate. She wanted that  
27 changed, and finally the Judge said, "Do you have the authority  
28 to settle this? Has the Senate given you that authority?"





1 I called and confirmed and was told that I did have, and  
2 I said, "Yes." He said, "Then why cannot we not use the language  
3 'paid by and/or through' because the 'or through' is where your  
4 authority comes from. That is acceptable to this, and we have a  
5 settlement, and we won't go on with lengthy trial."

6 And that's exactly what happened and why we came to that  
7 particular point, Senator Roberti.

8 CHAIRMAN ROBERTI: Thank you very much, Mr. Ruston.

9 We'll take testimony from the audience. Ms. Gloria  
10 Allred is here, and I'm sure she would like to speak.

11 MS. ALLRED: Senator, also after me there are two other  
12 witnesses who came from Los Angeles who have very brief remarks,  
13 if the Chairman would permit.

14 CHAIRMAN ROBERTI: Yes.

15 MS. ALLRED: Thank you.

16 Good afternoon, Senator Roberti, Members of the  
17 Committee.

18 Thank you very much for this opportunity to testify in  
19 this very important issue.

20 I know that Counsel has reviewed some of the history of  
21 the case. I, of course, have my perspective about the history  
22 and my memory of the history, and I would appreciate the  
23 opportunity also to give my memory and my perspective on the  
24 history of the case, which I will try to do concisely.

25 We're here today at the Senate Rules Committee to  
26 resolve the issue of whether or not the taxpayers should be  
27 forced to pay the settlement in the case of Gloria Allred versus  
28



1 Former State Senator John Schmitz. We've returned again to this  
2 Committee because former Senator John Schmitz is once again  
3 seeking to force the taxpayers to pay for his settlement, rather  
4 than assuming the responsibility to pay for it himself.

5 In 1982, I filed a lawsuit against then Senator John  
6 Schmitz and his Aide, Brad Evans, because of a press release  
7 issued by Schmitz and Evans which became infamous because it was  
8 filled with bigoted and defamatory statements maligning Jews,  
9 women, gays and lesbians, and myself. You remember, the  
10 references to gays and lesbians as being "queers" and  
11 "bulldikes", the Jewish women as being "a sea of hard, Jewish and  
12 (arguably) female faces," and to myself, "a slick butch  
13 lawyeress," to name just a few statements in the press release,  
14 which I will pass around for each Member of the Committee at the  
15 end of my remarks.

16 After I filed the lawsuit, the State Senate, in an  
17 action unprecedented in California history, voted on  
18 January 28th, 1982, to deplore the press release and disassociate  
19 itself from it. In spite of the Senate's vote, the Senate Rules  
20 committee later met, and this was in Executive Session, and over  
21 my protests voted to pay for Senator Schmitz' defense, which  
22 meant his legal fees and costs.

23 Later, another Executive Session vote was taken, but I  
24 believe I had heard that this was just a straw vote, to pay for  
25 Schmitz' settlement.

26 On August 21st, 1986, the day set for trial, I  
27 successfully ended the case. Senator Schmitz issued an apology,  
28





1 admitting that the press release was distributed from the State  
2 Senate Constitutional Amendments Committee, which he chaired, and  
3 that it contained language that, quote, "should not have been  
4 stated," end quote, and quote, "was wrongfully included," end  
5 quote. He also admitted that he stood behind the statement.

6 In addition to the apology, Schmitz agreed to pay  
7 \$20,000.

8 I felt that Schmitz, not the taxpayers, should pay for  
9 the settlement, and I therefore asked for a public hearing by  
10 this Senate Rules committee. That public hearing was finally  
11 held on December 30th, 1986, and I testified. I told this  
12 Committee that forcing the taxpayers to pay in this case would  
13 constitute a State subsidy for bigotry, and that there is no  
14 legal or moral reason why taxpayers should be forced to subsidize  
15 what the Senate had deplored and what conscience must condemn.

16 After a lengthy hearing, at which Schmitz' lawyer,  
17 Mr. Ruston, was present, the Committee voted, and the result was  
18 to reject taxpayer funding for the settlement.

19 I then returned to court on March 31st, 1987, and asked  
20 for Entry of Judgment against Schmitz. The Court heard arguments  
21 and the matter for further hearing. Schmitz, in his brief,  
22 objected to my actions with the Senate Rules Committee, and asked  
23 the Court to either dismiss my case or set the case for trial, or  
24 that the Court order the Senate Rules Committee to pay the  
25 \$20,000.

26 Judge Leon Savage, over my objection, first ordered the  
27 Senate Rules Committee to pay the \$20,000 settlement. I then  
28



1 called on the State Senate not to pay. The Senate then hired an  
2 attorney who came to court on December 27th, 1988 [sic], and I  
3 will distribute also a newspaper article about that, to argue as  
4 I did that the Court's previous order should be set aside, and  
5 that the taxpayers should not be forced to pay.

6 Finally, on February 16th, 1988, Los Angeles Superior  
7 Court Judge Leon Savage set aside his previous order and signed a  
8 judgment that orders Schmitz, rather than the taxpayers, to pay.

9 Schmitz then filed a Writ with the California Court of  
10 Appeals to stop me from enforcing the judgment. The Court of  
11 Appeal denied his Writ.

12 Schmitz also filed an appeal which is still pending.

13 It's my position today, and always has been, that a  
14 State Senator should not be economically insulated from the cost  
15 of his wrongful acts, and ordering the taxpayers to pay can only  
16 serve to encourage other Senators in the future to defame other  
17 members of the public who testify at Senate hearings, because it  
18 would send a message to them that they will never have to pay the  
19 price for their deplorable and wrongful acts. Instead, the  
20 taxpayers will get the bill.

21 I said then and I say now, if not in the case of  
22 Schmitz, then with whom shall we take a stand against State  
23 support for bigotry; and if not now, when?

24 And I would like to also briefly respond to the legal  
25 points which Counsel has raised regarding Section 825. And by  
26 the way, I never received a copy of the letter that Mr. Ruston  
27 says that he sent in February to the Committee.  
28





1 But I would respond regarding Section 825, since that  
2 section is specifically brought to the attention of the Committee  
3 today. I believe, Senators, that there are two key phrases  
4 relevant to today's hearing. The Section in point says that:

5 "If an employee or former employee of  
6 a public entity requests the public  
7 entity to defend him against any claim  
8 or action against him for an injury  
9 arising out of an act or omission  
10 occurring  
11 within the scope of his employment ..."

12 First, I'd like to deal with the phrase, "scope of his  
13 employment," then there'll be just one other phrase to deal with.  
14 "Arising out of an act or omission occurring within the scope of  
15 his employment."

16 The defamatory press release was not within the scope of  
17 his employment. This was no mere negligent act. It was  
18 intentional. It was malicious. And the proof was Brad Evans'  
19 deposition, the loyal Aide to Schmitz. On May 23rd, 1983, I sent  
20 each Member of the this Committee relevant parts of Brad Evans'  
21 deposition, and I just would like to cite a few lines.

22 He said that Schmitz told him to write a press release  
23 and, quote, "blast Gloria Allred, and we need to blast the  
24 witnesses who were opposed to the position and who had angered  
25 him," end quote. Evans stated Schmitz, quote, "wanted it out  
26 immediately," end quote. And that the reason he put it on the  
27 stationary of the State Constitutional Amendments Committee was,  
28



1 in his words, because Schmitz, quote, "told me that he wanted a  
2 statement issued by the chairman of this committee as the  
3 chairman of that committee," end quote. Schmitz was chair at the  
4 time.

5 Evans also stated that Schmitz, upon hearing of the  
6 release, said to a reporter, quote, "That's accurate, and I stand  
7 behind it," end quote.

8 It boggles the mind to think that it could be within the  
9 scope of a Senator to intentionally defame a witness who comes to  
10 a hearing.

11 Secondly, Section 825 only requires payment for a  
12 settlement of an action, and Mr. Ruston, I believe, did not refer  
13 to this, but it is the last line of the Section, of the first  
14 paragraph of the Section. It says:

15 "... [if] the request is made in  
16 writing not less than 10 days before  
17 the day of the trial, and the  
18 employee or former employee reasonably  
19 cooperates in good faith in the  
20 defense of the claim or action, the  
21 public entity shall pay any judgment  
22 based thereon or any compromise or  
23 settlement of the claim or action ..."

24 and here is the relevant phrase:

25 ... to which the public entity has  
26 agreed."  
27  
28





1           The public entity, Senators, did not agree to payment of  
2 the settlement in this case, and therefore is not required to pay  
3 under the Section. To the contrary, the Senate Rules Committee  
4 specifically held a public hearing, and I thank the Committee and  
5 thank this Committee again for having held that public hearing,  
6 on December 30th, 1986, regarding this very issue of whether or  
7 not the taxpayers should be forced to pay for the settlement.  
8 Mr. Ruston and I both were present, and both vigorously argued  
9 our positions. The Committee asked extensive and thoughtful  
10 questions and thoroughly discussed this before voting not to  
11 force the taxpayers to pay for the settlement in this case.

12           The decision of the Committee was covered by newspapers  
13 around the State, and many editorials appears in newspapers,  
14 radio or television, supporting the principle that Schmitz, not  
15 the taxpayers, should pay.

16           Therefore, since the public entity publicly and  
17 specifically did not agree to pay the settlement, Section 825's  
18 provisions are not met, and therefore there is no legal  
19 requirement that you pay.

20           Finally, enough is enough is enough. This Committee has  
21 an opportunity today to send a loud and clear message to former  
22 State Senator Schmitz that this Committee is not going to reopen  
23 this subject again. Schmitz should not be allowed to keep coming  
24 back to this Committee, taking up its very valuable time, when it  
25 has already decided this issue previously, and there are no new  
26 reasons for this Committee to re-decide this issue.  
27  
28



1           The taxpayers have already paid for Schmitz' attorneys'  
2 fees, and he's had his day in court. Should he now be rewarded  
3 with payment of the settlement? Why should the taxpayers be  
4 punished for his wrongful acts? Schmitz and only Schmitz should  
5 be accountable.

6           I might add that it seems ironic that Schmitz, who  
7 prided himself on attacking government spending and government  
8 subsidies, should now take what some may construe as a totally  
9 hypocritical position of asking for a government handout for  
10 himself.

11           You've given him a hand with the attorneys' fees. Don't  
12 give him a handout for the settlement. A hand, not a handout.

13           This case is unique. Your actions in it will not serve  
14 to restrict you in paying other settlements in the future which  
15 are appropriate to pay.

16           Let us not fund malice, hatred, bigotry, and prejudice.  
17 There is no legal reason why you should vote yes on this request,  
18 and I respectfully request a no vote on Schmitz' latest request  
19 for a State subsidy for bigotry.

20           Thank you very much, and I would at this time just like  
21 to pass around a few items.

22           Thank you.

23           CHAIRMAN ROBERTI: Thank you, Ms. Allred.

24           Are there any questions? Senator Petris.

25           SENATOR PETRIS: The statement about "his day in court,"  
26 I think is subject to a different interpretation.  
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1 Normally that means you went in, and you had a contest,  
2 and you put on your witnesses. You know, you tried the case.

3 The case has never been tried. That's one of his  
4 complaints.

5 Without going into the question of why it wasn't tried,  
6 it wasn't tried. It was settled. So he really has not had his  
7 day in court, I don't think.

8 He strongly believes that if he does go to court, he'll  
9 win, but that's water under the bridge also. I'm sure you're  
10 equally convinced that he's not or you wouldn't have filed it.

11 So I would take issue with that conclusion that he's had  
12 "his day in court."

13 MS. ALLRED: May I say, Senator, I just simply meant  
14 that he has had an attorney to represent him and to represent his  
15 interest. And I might add, I'm sure that Mr. Ruston has done  
16 that quite well.

17 SENATOR PETRIS: I would not disagree with you. It was  
18 just the use of a phrase which has a commonly accepted meaning  
19 which doesn't apply here.

20 CHAIRMAN ROBERTI: Thank you.

21 MS. ALLRED: May I just say, what I have handed to the  
22 Senators, for the record, is, the first thing is a copy of the  
23 Judgement, which Judge Savage did sign, and that is exactly what  
24 it says. The most important line would be Line 21 on the first  
25 page, which says:

26 "The sum of \$20,000 shall be paid  
27 to plaintiff by or through the  
28 defendants."



1 And of course, we had noted that the only defendants are Schmitz  
2 and Evans.

3 And then following that is the infamous press release,  
4 which was the subject of the lawsuit, "SENATOR SCHMITZ AND HIS  
5 COMMITTEE SURVIVE 'ATTACK OF THE BULLDYKES'". Followed by the  
6 transcript of the day in which the settlement was heard by the  
7 Court. The Court read the settlement from the bench, and that's  
8 enclosed for your reference as well. And then finally, a number  
9 of newspaper articles which record the Senate Rules Committee  
10 vote in the public hearing in which you voted not to fund the  
11 settlement, and some editorials and other articles.

12 Thank you.

13 CHAIRMAN ROBERTI: Thank you very much.

14 There are other witnesses in opposition. Please come  
15 forward.

16 MS. ALLRED: May I remain here in case there are any  
17 further questions?

18 CHAIRMAN ROBERTI: Yes, please.

19 MR. COLEMAN: Thank you, Senator Roberti, and Members of  
20 the Committee. My name is Thomas J. Coleman, Jr., and I'm  
21 presently Director of Legal Services at the Los Angeles Gay and  
22 Lesbian Community Services Center.

23 In the past, I've also been a practicing attorney in the  
24 States of Texas and Louisiana.

25 I'm here today to represent my own views as well as  
26 those I have spoken to at the Center, and also other gay men and  
27 lesbians in the last year regarding the matter presently before  
28 the Committee.





1           Seven years ago, former Senator Schmitz issued a press  
2 release that not only made libelous statements about an attorney  
3 who simply exercised her right to express her opinions on  
4 important public issues, but which also deliberately sought to  
5 inflame already existing hatreds against certain groups of people  
6 simply because of who they are, including gay men and lesbians.

7           And I might add here that I was also honored to be able  
8 to testify a year and a half ago on this matter. At that point,  
9 I had just started to work as the Legal Director at the Gay and  
10 Lesbian Center and basically offer free legal advice to clients,  
11 and also operate a lawyer referral service.

12           But I came to find very quickly that people who came to  
13 our service were not only in need of legal help, but many of them  
14 came to my office with -- who were beaten up, who had bloody  
15 noses and black eyes, and many times I would ask these people  
16 where this came from. The answer was that these people were  
17 attacked on the streets, and attacked by gay and lesbian bashers.

18           So, in responding to this need, and also other incidents  
19 -- for instance, there was a gay man in Hollywood who got his  
20 head blown off in front of a gay bar; there was a man with AIDS  
21 in Long Beach who got his hip broken by gay bashers -- we started  
22 our voluntary reporting hotline at the Gay and Lesbian Center  
23 under the Legal Services Program. And again, it wasn't because  
24 we were funded for the program, or even because we had time to  
25 conduct this program, but because there was a real need for this  
26 service.

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1           And when I hear statements made by Senator Schmitz, and  
2 then compare those statements, what he said about gay men and  
3 lesbians, and then read the reports that we get of people who are  
4 stabbed, who are beaten, had had their bones broken, who are  
5 assaulted, and then see that the words these people utter while  
6 these attacks take place, are the same words that Senator Schmitz  
7 uttered in his attack against us, I have to wonder why these  
8 sorts of words are uttered during these attacks.

9           And I really don't have the answer to that question, but  
10 I think part of the answer is that people we elect to serve  
11 positions of public responsibility have degraded the public  
12 discourse so much on these issues that many other people feel  
13 free to engage in these sorts of attacks based upon this behavior  
14 by our public officials.

15           When the State Senate acted to deplore the statements  
16 issued by Senator Schmitz, Members of this body stated repeatedly  
17 that there was no question as to the bigoted nature of the  
18 Senator's expression or of the clearly apparent ill-will which  
19 motivated his statement.

20           But when it comes to actually compensating Ms. Allred  
21 for the wholly unjustified insults she suffered, as well as the  
22 expressions of hatred inflected on gay men, lesbians, and other  
23 groups by former Senator Schmitz, we are told that because of  
24 action which may be taken by the Rules Committee, Senator Schmitz  
25 need not suffer any direct financial responsibility whatsoever.

26           I, along with all the other gay men and lesbians I have  
27 spoken with on this matter, and also the gay men and lesbians who  
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1 have been attacked in the last year -- and in fact, there were  
2 120 reports we got at the Center between April and December of  
3 1987 concerning these sorts of physical attacks -- we would like  
4 to express our extreme displeasure toward this course of events,  
5 or possible course of events. No legal, moral or public policy  
6 purpose is served by providing what is in effect, and as  
7 Ms. Allred has pointed out, a financial subsidy to statements  
8 that all responsible people agree are clearly reprehensible.

9 Now again, that's not to say that, for instance, the gay  
10 and lesbian issue is not an emotional issue, and we may have  
11 strong disagreements about that issue. But I think where it  
12 serves us all well to use appropriate language and appropriate  
13 terms in this discussion, and when people in positions of public  
14 responsibility degrade the language, I think many times it leads  
15 to others forms of attacks as well.

16 And also, as an attorney myself who has defended public  
17 officials -- I used to represent public officials in Louisiana  
18 who had suits brought against them -- I understand the need to  
19 provide public funds in certain cases so that the public interest  
20 is not harmed. Many decisions made by public officials are  
21 discretionary. But I think we can all agree that no such  
22 interest is served in this particular case, and that no court has  
23 agreed that payment is required in this case.

24 I thank you very much for allowing me again to testify  
25 before this Committee, and I would like to hand you my prepared  
26 statement.  
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1 CHAIRMAN ROBERTI: Thank you very much. Senator Petris  
2 has a question.

3 SENATOR PETRIS: I think that's an excellent statement.

4 You can tell there's a lot of anguish up here. That's  
5 why it's dragged out so long. It's very hard to resist the  
6 arguments of Ms. Allred. Not only is she a skillful attorney,  
7 but it's just the basic facts in the case.

8 You can see from the action of the Senate in rejecting  
9 his comments and disassociating ourselves that even those who  
10 were close to him in his own party on the much more conservative  
11 side of the rainbow and in the political world, those who didn't  
12 want to vote against him stayed off the roll call, as I remember.  
13 I haven't reviewed the roll recently, but I was one of those who  
14 condemned the action and so forth.

15 Now, we have a situation here in which I think we misled  
16 the Court. We sent two signals to the Court, other than the vote  
17 that Ms. Allred appropriately referred to. We had the  
18 preliminary vote -- I don't know whether it was a straw vote or  
19 whether we voted and it was reversed again; my recollection isn't  
20 exact -- but we sent at least two signals to the Court.

21 The Court specifically asked us if we would authorize  
22 the settlement of this case for X dollars. We said yes. First,  
23 the attorney asked us, and he gave us a range. And we authorized  
24 him to settle it within that range.

25 We weren't parties to the action, so why were we even  
26 talking about it? Well, because of the overall picture.

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1 Secondly, when it came to a settlement, he called to  
2 confirm. First of all we approved the range, and secondly, we  
3 approved the specific settlement. We said go ahead and do it.

4 Now, it wasn't because we're coming to the aid of  
5 Schmitz, and we're agreeing with what he said. Every person, as  
6 far as I know, who was here in the Senate at the time deplored  
7 the action and voted, you know, to disassociate.

8 But now we're confronted with our legal responsibility.  
9 Our Counsel informed us that we had a duty to tender, the  
10 defense. It was challenged in court on two separate occasions,  
11 and our action was upheld.

12 So now we're in the soup. Now we're in the lawsuit.  
13 The question is: What's the most prudent way for us to resolve  
14 this thing?

15 Part of our decision to approve the settlement was based  
16 on a desire to keep the expenses down as much as we could. We  
17 know the exposure. There are millions of dollars involved, and  
18 it could well have, if it had gone to trial, it could well have  
19 ended in a very substantial judgment and so forth.

20 Now, I'm disturbed. I'm very disturbed about what  
21 Schmitz did. Certainly I haven't heard anybody in the Senate  
22 support it, no matter what the political view of that person is.  
23 I think it's abhorrent.

24 But we're in a very practical problem that we're now  
25 facing years later, or we faced last year, and that's why I think  
26 we ought to go ahead and pay the thing rather than incur  
27 additional expenses requiring the lawsuit to be filed against the  
28 State.



1 Now, I can assure there's a difference of opinion here  
2 on the law. Ms. Allred believes we don't have any responsibility  
3 and believes that she'll win that point in court. Our attorney  
4 says he feels exactly the opposite.

5 There again, we're faced with additional money and  
6 additional time and additional expenses.

7 Now, with respect to the gay community, we have a much  
8 worse case than that. I haven't kept up, but I think it may  
9 still be pending. We have another former Senator who made a  
10 horrible statement during some statewide campaign in San  
11 Francisco, which was interpreted by some people on the streets in  
12 San Francisco as an invitation to go out and beat up on gays.  
13 One of them was killed. So there was a lawsuit filed. We're  
14 representing him in that lawsuit. We're tendering the defense.

15 You think we're speedily rushing to the aid of this  
16 Senator and saying, "Hurrah for you! You represent our  
17 viewpoint, and we're going to give you all the money you need to  
18 fight this case."

19 That's not the point at all. But it's difficult to  
20 explain that to the general public, and in particular to the  
21 particular segments of our society which have been terribly  
22 maligned by those statements.

23 Now, if we change the law, which is another matter and  
24 another policy, we can go quickly in another direction. But  
25 while you were speaking, it brought to mind this other case in  
26 the Northern part of the State. So we've got a Southern  
27 California one and --  
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1 CHAIRMAN ROBERTI: I think that one's been pending for  
2 about ten years.

3 SENATOR PETRIS: We represented Roberti in another case,  
4 but that was an accident type.

5 CHAIRMAN ROBERTI: Well, therein does lie the problem.

6 I was sued for a million dollars by Mr. O'Shea, who I  
7 had said had written a book, and to paraphrase my remarks at that  
8 time, which was anti-Jewish, anti-gay, and anti-Black. And he  
9 sued me for a million dollars because he said I was defaming him.

10 Now, that's more money than I have by a long shot.

11 Of course, the concern is that Legislators, who have a  
12 duty -- in this case, in my case, to rise to the defense of the  
13 gay community which is in my district, along with the Jewish  
14 community which is in my district; whether they were in my  
15 district or not, I should say something -- for doing that, I get  
16 sued. And I get sued for a million dollars.

17 And the other side of the coin is, you know, we are  
18 exposed. I'm voting with Ms. Allred on this, but I mean, there  
19 are two sides to the story. We are exposed because of the  
20 convictions we have in pursuing our duties, and we get hit by  
21 these lawsuits. Nobody will hold public office if everything you  
22 have is exposed to your suit. In this case, I mentioned how  
23 offended I thought Blacks and Jews and gays should be by  
24 Mr. O'Shea's comments, and, well, "David, you're on your own."

25 The issue isn't totally clear. I want to make that  
26 point to you. We can't make judgments based on, well, in this  
27 case it was a right-winger who got hit, who claims he was  
28



1 defamed, but in this case, no, these people are people who are  
2 more apt to vote for me; these are the people who got defamed.  
3 It's a tough question.

4 MR. COLEMAN: As a legal practitioner, I certainly  
5 understand your concerns. And luckily, I haven't been sued  
6 myself in such a capacity, although I was threatened with a  
7 lawsuit this week, and even a threat might send a chill up your  
8 spine.

9 I do know the feeling, however, of having a public  
10 official being sued in their own individual capacities and having  
11 them come to me and say, "Help, I've been sued." So, I think I  
12 do have some understanding of the problems in this area, even the  
13 legal problems.

14 I'm not an attorney admitted in this State. I think  
15 Ms. Allred and some of the other attorneys who worked on the case  
16 have defined the issues much better.

17 But basically, the change, as far as I've seen in the  
18 last year, is that we did start this violent invitation project.  
19 I have seen, in fact what the language of violence can do against  
20 people.

21 Now, the gays and lesbians did not sue Senator Schmitz  
22 in this case. And since he just made a statement about a broad  
23 community, it's very arguable whether really an entire community  
24 would have standing to bring a suit, because we really link his  
25 statement to a particular injury.

26 But I think there is some link between public statements  
27 of this kind in general, where people in high positions make  
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1 statements like this, use this sort of language, and you hear the  
2 same sort of language exactly used by people who actually  
3 physically attack people.

4 But in fact, Ms. Allred was personally attacked, and I  
5 think she did have standing to file a lawsuit. And I think they  
6 did reach an amicable settlement, and the judgment of the Court  
7 says that the judgment's to be paid by and through Mr. Schmitz.  
8 And this Committee decided that they would not -- that the Senate  
9 would not pay last year.

10 So I think at some point we have to put an end to this.  
11 And I understand that some people may vote differently. For  
12 instance, I think Senator Craven has voted not to deplore,  
13 although I'm sure he did personally deplore Senator Schmitz'  
14 statements, but he voted not to compensate either. So, I  
15 understand there are a lot of ways of looking at this.

16 My concern is that I understand this, and you understand  
17 this, but I know that if the Committee votes to pay and  
18 compensate, the headlines will read, "The Committee Votes to  
19 Compensate," and then we will hear the language all over again.  
20 And I'm concerned about the message that sends out.

21 CHAIRMAN ROBERTI: I think I've almost memorized the  
22 press release almost as well as Ms. Allred has.

23 One other point which I want to raise because it regards  
24 the legal fees, and that also was controversial.

25 Maybe the reason why we're in this problem in part --  
26 and I'd like Ms. Allred to address this -- is, I recognize why  
27 you have to sue before the Board of Control. But it's my  
28



1 understanding -- since it's seven years ago, it's hard to  
2 recollect everything -- but it's my understanding that you did  
3 sue before the Board of Control, and since the State was named,  
4 once that happens, we had what we felt was no option but to  
5 defend the State.

6 Now, I recognize that to preserve your tort, you have to  
7 go before the Board of Control. You're almost in a Catch 22  
8 position, as are most people. But the problem is, we got stuck  
9 having to pay the legal fees based on advise of counsel for that  
10 and other reasons because you, in trying to preserve your right  
11 of tort had to mention the State, had to name the State, rather.

12 I'm just saying that to say how convoluted and  
13 complicated these issues can be, and that people who actually are  
14 of one mind at one point have to find themselves on different  
15 sides because, unfortunately, they represent different interests.

16 But once the State is named in a suit, we had no choice  
17 but to defend.

18 And I do think that every time I talk about the legal  
19 fees, that point has never been raised. I'm not criticizing  
20 Ms. Allred, because under our laws, she has no choice if she  
21 wants to protect her tort right, which she has wanted to do, but  
22 to pursue all avenues, and one is naming the State, which she has  
23 always said, at least subsequently, that she's not going to seek  
24 any redress from.

25 This is a very tough issue. I do not feel, however,  
26 that we promised Mr. Schmitz to the point where he acted  
27 detrimentally to his own interests. I feel the original meeting  
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1 with Mr. Ruston was to set the parameters. Subsequently there  
2 was another vote. I can't remember, but that was after, I  
3 believe, the judgment was rendered and after we had been told  
4 that we had understood that the Senate had been named. As soon  
5 as we found the Senate hadn't been named in the suit, it was  
6 clear that no participant, in my mind, could think the Senate was  
7 a party to this suit, and any other understandings, I don't feel,  
8 would hold.

9 It's based on that, our not being named, that I intend  
10 not to vote for the judgment payment, and Mr. Schmitz is free to  
11 sue us. And if the case is as clear as Mr. Ruston says, and I  
12 haven't studied it nearly as much as he has, he's free to go to  
13 court in this country and get a judgment.

14 Thank you for coming. Is there anybody else?

15 MS. ALLRED: While he's coming up, if I may just briefly  
16 respond to Senator Petris, one thing that he said.

17 Senator Petris, of course, Members of this Committee, or  
18 your authorized agent, may or may not have -- and I'll take it  
19 for purposes of discussion that it was indicated to Mr. Ruston  
20 that there may have been some parameters in regards to the  
21 settlement.

22 I never agreed that I, as part of the settlement, would  
23 take the money from the taxpayers, wanted it, accepted it, or  
24 anything else. To the contrary, I was very specific about the  
25 wording that it would be defendants only.

26 And as Senator Roberti has pointed out, and as I know  
27 that all of you are aware, that the State was not a defendant.  
28



1 So I specifically did not ever agree, and a person may or may not  
2 have indicated it, but I never agreed to any such thing.

3 And in any event, and one other thing briefly, which is  
4 that this case is unique, of course, in that it defamed a  
5 witness, and witnesses, who came to a hearing. And so, in that  
6 case, it has another public policy layer to it, I think, that  
7 makes it unique and different from Senator Roberti's case, in  
8 which he was sued, and different from a lot of other cases,  
9 perhaps the very important case that Senator Petris has just  
10 pointed out. And I know that all the Senators here are committed  
11 to encouraging all the people in the State to come to testify at  
12 public hearings and would not in any way want to deter them; in  
13 fact, would want and always do encourage them to come.

14 And just very briefly, that I've always indicated from  
15 the beginning that I never wanted to the taxpayers to pay. And I  
16 didn't, by the way, mean today to criticize this Committee at all  
17 for paying for the defense. That's a total different issue, and  
18 I'm here only in regards to the settlement.

19 MR. BLAZER: My name is Phil Blazer. I'm a publisher of  
20 The National Jewish News, and was part of the team of two who  
21 came here on that very important day in January in '82 to try to  
22 get support for the disassociation statement on the Floor of the  
23 Senate.

24 During my over 20 years of being a Jewish activist, I  
25 think that was probably one of the most important days in my  
26 career, when the Senate made that statement.

27  
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1           It's only a shame that we're still anguishing over this  
2 particular past member of the Senate still today. But I think  
3 it's important to use the word principle over the word prudent,  
4 Senator.

5           I'm not as compassionate as Gloria is on this particular  
6 issue, and to the degree that she -- I wouldn't accept the  
7 apology of the Senator. I don't today. I wouldn't of Jesse  
8 Jackson's statement of "Hymie Town." I find any statement of  
9 bigotry to be deplorable and inexcusable.

10           I salute Gloria for this long, tenuous period, along  
11 with the Rules Committee on this particular issue, because it is  
12 tedious, and it's rather disgusting.

13           But I do feel that the issue is not just \$20,000. I  
14 believe that the Senate has already paid, if not over \$15,000,  
15 then \$30,000 in legal fees. I don't know if they've been finally  
16 paid or not.

17           CHAIRMAN ROBERTI: I don't know, but it's not  
18 insignificant.

19           MR. BLAZER: But I don't think the issue is just \$20,000  
20 paid by the taxpayers. I think, my own particular opinion, is  
21 that the \$20,000 should not be paid by the taxpayers. And if,  
22 indeed, it costs more so that that was not the case by the Senate  
23 to issue this payment on behalf of Schmitz, that the Senate, the  
24 Rules Committee, the State of California, should fight this  
25 issue.

26           I know there's some legal glitches, perhaps, but I think  
27 it's a matter of principle. And I flew up here today to make  
28





1 that statement, to support Gloria, and to also thank those of you  
2 who were, in January of 1982, supportive of this disassociation  
3 statement, too, because I think it was a very important moment in  
4 California history. I think it was a very wonderful moment on  
5 the positive side, and I would like to see that moment of history  
6 continue on the level of principle.

7 I urge you to proceed on that basis if at all possible.

8 CHAIRMAN ROBERTI: Thank you very much, Mr. Blazer.

9 Are there any other witnesses in support or opposition?

10 Mr. Ruston, since you made the initial presentation, you  
11 get to have the final few words.

12 MS. ALLRED: (since I'm going to be leaving now, going  
13 back into the audience, I just would like to say that I concur  
14 with Senator Roberti's suggestion also that, let Schmitz sue if  
15 he wants the money, if he thinks he's right.

16 Also, by not responding to any statements that  
17 Mr. Ruston made about the history of the case directly, that does  
18 not mean that I agree to his version. I gave my own.

19 Thank you.

20 CHAIRMAN ROBERTI: Mr. Ruston, you can make the final  
21 rebuttal.

22 MR. RUSTON: Thank you very much.

23 Senators, I listen each time, as I did before when the  
24 presentations were made.

25 What Senator Petris says is very true. We're not here  
26 talking about the issues of this case. This case was not tried.  
27 Nothing was won. An agreement was made.  
28



1           It's a matter of honor and principle to live up to that  
2 agreement.

3           You have heard the statement that this could not have  
4 been anything that was within the course and scope. I remind you  
5 that when the request was made that Senator Schmitz be defended  
6 in this matter, that Code Section, likewise, involved the  
7 question as to whether or not the remarks had been made in the  
8 course and scope, or was a part of the duties and activities.  
9 And it was decided that he had in fact acted that way.

10           And remember, he didn't issue the statement. Brad Evans  
11 did. Both of the last two witnesses have said the statements  
12 that Senator Schmitz made. Senator Schmitz did not make the  
13 statement. Brad Evans issued the statement. The statement came  
14 out of a Senate Committee, and Senator Schmitz said, " As the  
15 Chairman, I will stand behind it."

16           Now, does that amount to ratification? I don't know,  
17 but it doesn't matter.

18           The fact remains that the Court has ruled that this was  
19 something that was done in such a way that a defense had to be  
20 provided, and that's exactly the same issue that's present in the  
21 Government Code Section about paying.

22           It's been decided by the Court of Appeal, and it's been  
23 attacked twice, including by a gentleman who is now a Senator  
24 here in a suit in San Francisco, in which they said it's res  
25 adjudicata, that this was within those purviews where the defense  
26 had to be provided.

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1 The Court, and I'm talking now about Judge Savage, who  
2 participated in this settlement conference, made these remarks  
3 which I'd like to read to you on December 24th, 1987, about what  
4 occurred in the settlement conference. Mind you, he was the  
5 Judge. He has no prejudice. He has no person that he is for or  
6 against. He is the Judge. And the Court said -- and this is at  
7 the time that the motion was brought, incidentally, by Attorney  
8 Brown with regard to whether or not there was jurisdiction over  
9 the Senate. And before I read this, Senator Roberti, let me  
10 digress for just a moment.

11 As a condition precedent to suing any member of a  
12 government entity, I remind you that a claim has to be filed.  
13 That is the claim that was filed. The State Senate and the State  
14 of California was never named as a party in this, and the claim  
15 that was filed by Ms. Allred was because of the requirement to  
16 file a claim against someone who was in office, such as Senator  
17 Schmitz.

18 When we come down to this, and it becomes a matter of  
19 your defending if he's there and the possibility of paying, I  
20 raised the issue that the Senate, in fact, was the real party in  
21 interest because they had the responsibility under the Government  
22 Code.

23 CHAIRMAN ROBERTI: Which claim are you talking about?

24 MR. RUSTON: The claim for defense and for the payment  
25 right now.

26 CHAIRMAN ROBERTI: That was when?  
27  
28



1 MR. RUSTON: I can give you the chronology -- it goes  
2 back so far -- so that you can have that.

3 The original complaint in this matter was filed in  
4 January 22nd, 1982. Prior to that, a claim was filed, a verified  
5 claim was filed, and the condition precedent to bring in the  
6 lawsuit against John Schmitz and Brad Evans, both of whom were  
7 employees.

8 I think that is the claim that you were originally  
9 referring to when you were talking to Ms. Allred.

10 That did not per se name the State of California, or  
11 anyone, except those two employees, but that is the condition  
12 precedent.

13 As such, they were always the only parties in this  
14 particular matter, but it was because of the fact that they were  
15 employees, and they fell within the Government Code Section, and  
16 because the claim had been filed, that the demand was made. And  
17 I wasn't around at that time. I'm reading simply the opinion of  
18 the Court, and all the other things that went into this. And the  
19 Legislative Counsel gave the opinion that it should be afforded  
20 to him under the Section, pointing out that if there were any  
21 punitive damages, or if there were any intentional acts, that it  
22 could be avoided, but as long as the claim included things that  
23 could be covered, that the defense had to be provided, and it  
24 was.

25 A taxpayers' lawsuit was filed here in Sacramento. That  
26 taxpayers' lawsuit was lost by them, in which the Court said that  
27 in fact the duty was owed to providing the defense under the  
28



1 Government Code Section. That went on to appeal and came down as  
2 an appellate decision affirming what the trial judge had done  
3 here in Sacramento.

4 During the time that I was on this, and before we come  
5 up here, you may recall, that now Senator Kopp in San Francisco  
6 filed another lawsuit. That went into the courts, and the courts  
7 held that because of the lawsuit here, and the same issue, it was  
8 the same lawsuit, it was res adjudicata. And therefore, no new  
9 matters had been brought up, and the defense had to continue, and  
10 it still fell under the Government Code Section with regard to  
11 providing a defense.

12 The Government Code Section that I referred to in my  
13 letter provides that if a defense is being provided, which it was  
14 in this case, under the Government Code Sections, then if there's  
15 a judgment or a settlement that has been approved, the  
16 governmental entity, in this case the State or the Senate, must  
17 pay same.

18 So, it was not a matter of the State being a separate  
19 party at any time, or the Senate being a party. It was always  
20 with regard to Brad Evans and John Schmitz.

21 Going now to that which occurred, I won't read all of  
22 this, but Judge Savage said:

23 "Until the filing of this motion ..."  
24 and this was Attorney Brown's motion with regard to no  
25 jurisdiction over the Senate to order them to pay it. You'll  
26 recall, an order had been issued compelling the Senate to pay  
27 this, wherein Judge Savage made a finding that the Senate is the  
28





1 only one that made the offer, that he had been on the phone with  
2 the Counsel up here himself from chambers, and that it had been  
3 verified before the settlement ever went through.

4 That order, once it was made, was then -- was when I was  
5 substituted out because there was a conflict as to whether or not  
6 I should represent both the Senate and John Schmitz, because of  
7 the question that came about with regard to whether the order  
8 would apply. At that time, Attorney Brown came in, and Attorney  
9 Brown argued, successfully, before Judge Savage that there was no  
10 jurisdiction over the Senate, since the Senate or the State of  
11 California per se was not a party, and only a person who was  
12 their employee. A direct order, therefore, couldn't be made.

13 I argued that the State and the Senate was the real  
14 party in interest because of the liabilities and responsibilities  
15 that they had under the Code. The Court disagreed and said no,  
16 unless they're an actual party, I can't make an order because I  
17 couldn't hold anybody in contempt or anything else; they're not  
18 personally before me, no in persona jurisdiction.

19 And the Court went on after that, in making that ruling,  
20 to say:

21 "Until the filing of this motion  
22 at the beginning of this month to  
23 set aside and vacate the Court's  
24 order of July 14, 1987, this Court  
25 believed that the Senate of the  
26 State of California and the Senate  
27 Rules Committee authorized,  
28



1 participated in, and agreed to the  
2 settlement requiring it, the Senate,  
3 to pay the sum of \$20,000 to the  
4 plaintiff, Gloria Allred. That  
5 belief was founded upon these facts.

6 "As the settlement Judge in this  
7 matter, this Court participated in  
8 intensive and difficult settlement  
9 discussions over several days with  
10 Ms. Allred, former Senator John  
11 Schmitz, and attorneys Don Ruston,  
12 Michael Maroko, and Charles O'Riley,  
13 and by telephone with California  
14 Legislative Counsel, Bion Gregory.  
15 During those settlement negotiations,  
16 the Court was advised that prior to  
17 the filing of the lawsuit, and as a  
18 condition precedent, a claim was filed  
19 by Gloria Allred against the State of  
20 California pursuant to Government Code  
21 Sections as an enabling prerequisite to  
22 the filing of this lawsuit claiming  
23 essentially that a press release defamed  
24 Ms. Allred, and that the names of the  
25 officers, employees, and agents of the  
26 Senate causing the damage were John G.  
27 Schmitz, a State Senator, and Brad Evans,  
28 an Aide to Senator Schmitz.





1 "The Court was also advised during  
2 those settlement discussions that Don  
3 Ruston had been retained by the Senate  
4 Rules Committee as Counsel to represent  
5 the Senate and Senator Schmitz in this  
6 litigation, it was in fact paying his  
7 attorney's fees and costs.

8 "In that settlement process, after  
9 many hours of stressful grappling with  
10 essentially each and every word, phrase  
11 and sentence of a settlement agreement,  
12 Ms. Allred, former Senator Schmitz, and  
13 the attorneys agreed upon the payment  
14 of the sum of \$20,000 to the plaintiff  
15 by and through the defendant; a release  
16 by Ms. Allred of any governmental  
17 entity, governmental body, governmental  
18 committee, subdivision, officer, agent  
19 or employee thereof; and an apology by  
20 former Senator Schmitz."

21 "The words 'by and through the  
22 defendant' in that release language were  
23 suggested this Court after several  
24 telephone conversations with Mr. Gregory  
25 in Sacramento from my chambers, with  
26 Mr. Ruston present, and the Court's  
27 clear understanding from Mr. Gregory  
28



1 and Mr. Ruston from those telephone  
2 conversations that they had obtained  
3 authority from the Senate to settle  
4 the case by the payment by the Senate  
5 to Ms. Allred of the sum of \$20,000."

6 "Knowing that Ms. Allred had  
7 voiced her objection to everyone to  
8 the language, which at that time was  
9 proposed by Mr. Ruston, that the  
10 settlement agreement provide for the  
11 payment of \$20,000 by the Senate,  
12 the Court then suggested the words  
13 'by and through the defendants' in  
14 the release language, and everyone  
15 agreed."

16 Now, let me stop at this point.

17 Ms. Allred was present when I insisted upon the words  
18 "by and through the Senate" and said that's where the money was  
19 coming from, and that was my authority. She wanted the language  
20 changed, and we fought for one day, until "by and through" was  
21 added instead of the language "paid by the Senate," but only  
22 after we had phoned to Sacramento for confirmation.

23 Now, there's one other thing that I think is extremely  
24 important in this regard. Notice that the judgment that  
25 Ms. Allred has given to you provides that a release will be given  
26 to the Senate, California, its agents and everyone else. Why?  
27 Because that was part of the task that was given to me as your  
28



1 attorney to make sure that I was not only getting you out of any  
2 potential liabilities from Schmitz, or from Evans, but also  
3 Ms. Allred over this whole matter so that it could be brought to  
4 a complete conclusion. And that language is still there.  
5 Ms. Allred has never signed a release, releasing this Senate or  
6 anyone in it from anything.

7 And that is a part of the judgment, but she still  
8 pursues and insists upon having the money not paid by the Senate,  
9 but wanting John Schmitz to sign a release, where if he, in  
10 technical terms, if he released you from all liability from this,  
11 he'd waive any lawsuits.

12 It is a three-party, and the only one who has really  
13 lived up to this, I humbly submit to you, is Senator Schmitz,  
14 because he's made the apology. And you've heard the language  
15 that has been used to him and is published in these articles  
16 repeatedly from that apology. He's lived up to what he said he  
17 would.

18 Gentlemen, I agree with what was said, an end should  
19 come. I respectfully submit it should paid without further cost,  
20 without further litigation, and without further ado. A contract  
21 was made. I think the contract should be honored.

22 CHAIRMAN ROBERTI: Thank you very much, Mr. Ruston.

23 On the motion of Senator Petris, the Senate will take  
24 this item up for vote only. People are free to come, but we will  
25 have vote only on the tenth of August.

26 (Thereupon this portion of the Senate  
27 Rules Committee hearing was terminated  
28 at approximately 4:00 P.M.)





CERTIFICATE OF SHORTHAND REPORTER


I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

30<sup>th</sup> day of June, 1988.

  
EVELYN MIZAK  
Shorthand Reporter









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APPEARANCESMEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR JIM ELLIS

SENATOR HENRY MELLO

MEMBERS ABSENT

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

GLORIA S. HOM, Member  
State Board of Education

KENNETH L. PETERS, Member  
State Board of Education





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P R O C E E D I N G S

--oo0oo--

CHAIRMAN ROBERTI: Governor's Appointees appearing today, Gloria Hom, Member of the State Board of Education. Please come up, Ms. Hom.

We'll ask you the same question we've asked you before; that is, why you feel you're qualified to maintain this position?

MS. HOM: First, I wanted to say that I feel qualified because I've spent many years in school. In fact, all my life I've spent in school, and the last 20 years I've spent as a classroom teacher as well as administrator, and I've taught at all levels of higher education. I've taught at the community college, the State college, and the university, and I see the product of what our public education has produced, and I feel that I can give my best contribution in that way.

Secondly, I've spent four years on the State Board. I've chaired two of the three standing committees, the Administrative and the Master Plan Committee, and I'd like to continue to see through some of the projects that we have started.

Thirdly, I feel that I'm qualified to serve on the State Board of Education because I feel I'm sensitive to the needs of minorities, being a minority myself, and also being -- coming over here when I was -- I was born here, but I went overseas and I came back at 17, and I know what these immigrants are facing.

And lastly because I feel very patriotic, and I feel that I can best serve and best give my contribution in education,





1 and education is, indeed, the cornerstone of our democracy, but  
2 it certainly requires an educated citizenry. And I think this is  
3 where I can certainly make my contribution.

4 CHAIRMAN ROBERTI: There has been some concern that the  
5 State Board does not operate as an independent evaluating body,  
6 and if the Administration gives an instruction, the Board  
7 reverses its position, I think, after being contacted by someone  
8 in the Governor's Office on a matter of some import, which  
9 escapes me at the moment, but that's not the point anyway.

10 How do you view your role on the Board of Education?

11 MS. HOM: Well, I think --

12 CHAIRMAN ROBERTI: What would you do if somebody from  
13 the Governor's Office called you and said, "We don't like some  
14 public policy" that the Board is committed to, or which you had  
15 committed to, and they're opposed to that policy?

16 MS. HOM: I'm familiar with what you're talking about,  
17 and I just wanted you to know that I didn't change my vote on  
18 that particular one.

19 I feel that we're fairly independent; we're a fairly  
20 independent Board.

21 CHAIRMAN ROBERTI: That's how it should be, and it's not  
22 as if you're part of the Governor's administration.

23 I can appreciate if the Governor calls one of his  
24 secretaries and says, "Change your position," they'd better  
25 change their position. But the State Board of Education, you're  
26 there for an independent evaluation.

27 Is anybody opposed to Ms. Hom's confirmation?  
28



1 SENATOR CRAVEN: Move Ms. Hom's confirmation.

2 CHAIRMAN ROBERTI: Fine, I have just one more question.

3 We have some problems in the area of categorical  
4 programs, categorical aid to education and education programs.  
5 Periodically it's a controversy in the budget, and ranges from  
6 gifted to English as a second language, and a whole host of  
7 programs where the Legislature, somewhere along the line, felt  
8 that some kind of special attention was demanded as far as the  
9 educational system was concerned in the specific area of  
10 education.

11 Do you support generally the categorical programs? Do  
12 you think there's a place for them?

13 MS. HOM: As I understand it, the categoricals are  
14 actually for districts who would not do what we wanted to do, and  
15 so I think that categoricals, in that instance, are certainly  
16 appropriate.

17 CHAIRMAN ROBERTI: Any other questions of Ms. Hom?

18 Senator Craven has a motion before us. Secretary will  
19 call the roll.

20 SECRETARY WEBB: Senator Ellis.

21 SENATOR ELLIS: Aye.

22 SECRETARY WEBB: Senator Mello. Senator Petris.  
23 Senator Craven.

24 SENATOR CRAVEN: Aye.

25 SECRETARY WEBB: Senator Roberti.

26 CHAIRMAN ROBERTI: Aye.  
27  
28



1           The vote is three to zero; confirmation is recommended  
2 to the Floor.

3           MS. HOM: Thank you.

4           Very good.

5           (Thereupon the Rules Committee  
6 acted upon legislative matters.)

7           CHAIRMAN ROBERTI: Kenneth L. Peters, Member of the  
8 State Board of Education.

9           Mr. Peters, we'll ask you what we asked Ms. Hom: why do  
10 you feel you're qualified to assume this position?

11          MR. PETERS: I think I bring many, many years of  
12 experience as a teacher and as an administrator to the State  
13 Board. It's hard to admit it, but this is my 50th year serving  
14 in public education. I started teaching in Montebello in 1938.  
15 I was Principal of Montebello Senior High School, Principal of  
16 Beverly Hills High School, and Superintendent for 23 years of  
17 Beverly Hills Unified School District.

18          It seemed to me when I had the opportunity that I could  
19 bring some experience and background to the State Board, and  
20 hopefully I've done that in the past four years.

21          CHAIRMAN ROBERTI: Let me ask you the same question I  
22 asked Ms. Hom, and now I recall what it was. It was a reversal  
23 on Propositions 71 and 72, the position that the State Board  
24 might take.

25          Do you think that was appropriate on the part of the  
26 State Board? How did you vote?

27  
28





1 MR. PETERS: I voted to support 71 and I did not change  
2 my vote. I felt it was something that we needed for public  
3 education.

4 I certainly want to hear from the Governor and respect  
5 the advice, and I want to hear from Mr. Honig and I respect his  
6 advice. But I feel I'm on the Board to exercise what basically  
7 brings my background and experience to that assignment.

8 CHAIRMAN ROBERTI: That answers my second question.

9 Are there any other questions? Senator Mello.

10 SENATOR MELLO: One of the concerns I have with the  
11 State Board of Education has been their position on bilingual  
12 education. I had to step out of the room when Ms. Hom was here  
13 as well.

14 We heard extensive testimony from Angela Papadakis, and  
15 she was ultimately turned down, primarily because of her strong  
16 role she played against bilingual education.

17 I'm going to be leading up to a question to you, but  
18 just as way of background, this was established by the U.S.  
19 Supreme Court in the decision Lau vs. Nichols, which mandated  
20 that persons not proficient in English, or with limited or  
21 non-English speaking skills, were entitled to be taught in their  
22 own native language, along with being able to learn English as  
23 well.

24 It just seemed like the Board of Education voted ten to  
25 nothing, and as a result, we made a study about some of the votes  
26 taken there to oppose the Speaker Willie Brown's bill, which  
27 would have replaced the bilingual education program. This was  
28 ultimately vetoed by the Governor, I guess.



1           What was your role in that program? What is your  
2 position on bilingual education as it pertains to our own schools  
3 here in California?

4           MR. PETERS: Well, I think bilingual is necessary in  
5 terms of the population that we're trying to serve in the schools  
6 of California. I certainly feel that bilingual, along with any  
7 program, periodically needs to be reviewed.

8           The only problem I had with that bill, as I recall, was  
9 that I felt that parents should be a part of the process in  
10 making the decisions. And I also felt that some terminal point  
11 along the way in terms of moving the decision from the State to  
12 the local school district was appropriate.

13           But I had no problem with Mr. Brown's bill.

14           SENATOR MELLO: Yes, but when you say that, the parents  
15 should be involved, here's the highest court in the land, the  
16 United States Supreme Court, rendering a decision that I think we  
17 become legally obligated to follow.

18           I don't see where the parents, most of them in these  
19 categories are limited or non-English speaking as well, and some  
20 perhaps do not realize the value of quality education where they  
21 can learn both English as their own language and become  
22 proficient in both languages. I think it's a decision of whether  
23 or not we respect the law and follow the law.

24           If we give parents a choice, some parents I'm talking  
25 about, of allowing their kids to go to school, we have a law that  
26 requires children to go to our schools. If you left it up to the  
27 parents, many children at the urging of their parents, perhaps,  
28





1 would not go to school at all. I know many in my area where  
2 they'd like to have their children out in the fields working,  
3 gaining a few dollars to help supplement the family income. But  
4 in the long-term, that's going to work as a hinderance in their  
5 ability to become educated and become self-sufficient on their  
6 own.

7 MR. PETERS: I certainly agree that Lau-Nichols has to  
8 be followed, and I want to feel sure what the various  
9 interpretations are of that.

10 But as I indicated, I had no problem with Mr. Brown's  
11 bill.

12 SENATOR MELLO: You must have been one of the votes --

13 MR. PETERS: I was one of the ten, yes.

14 SENATOR MELLO: -- who opposed Mr. Brown's bill.

15 MR. PETERS: Right, subject to requesting an amendment.

16 SENATOR MELLO: Well, I think that's unfortunate.

17 What's happening right now is, we are funding to some  
18 extent bilingual education throughout California without any  
19 State mandates. So what's happening, all of the guidelines and  
20 rules that were in effect as to the teacher ratio with the  
21 students, the number of hours per day, have all been cut back.  
22 The program's really been dismantled to the point where we do not  
23 have a workable bilingual education program in the State of  
24 California.

25 It's not only Hispanics. It's Chinese; it's a lot of  
26 Asians that come here without English speaking skills. Many,  
27 many languages that are, I think, losing the great resource of  
28



1 being able to be multilingual and really look at the makeup of  
2 our country, which is great diversity of a lot of nationalities  
3 and languages.

4 If we insist strictly, as some people do, let them speak  
5 English, we're going to be depriving a lot of people of an  
6 opportunity of mainstreaming within our system and our society.

7 MR. PETERS: Well, I certainly want that to occur.

8 I'm not sure what the numbers are in terms of the change  
9 in this past year. It does seem that Los Angeles has a more  
10 exacting program than they've ever had in terms of support of the  
11 program. And I think the district -- the last district I was in  
12 for 31 years, our program would meet any test in terms of  
13 bilingual and in terms of support of foreign languages generally  
14 and the culture of others.

15 SENATOR MELLO: All right, thank you.

16 CHAIRMAN ROBERTI: Any opposition to Mr. Peters?

17 SENATOR CRAVEN: Move confirmation.

18 CHAIRMAN ROBERTI: Senator Craven moves confirmation to  
19 the Floor. Secretary will call the roll.

20 SECRETARY WEBB: Senator Ellis.

21 SENATOR ELLIS: Aye.

22 SECRETARY WEBB: Senator Mello.

23 SENATOR MELLO: No.

24 SECRETARY WEBB: Senator Petris. Senator Craven.

25 SENATOR CRAVEN: Aye.

26 SECRETARY WEBB: Senator Roberti.

27 CHAIRMAN ROBERTI: Aye.  
28



1 The vote is three to one; confirmation is recommended to  
2 the Floor.

3 MR. PETERS: Thank you.

4 CHAIRMAN ROBERTI: Senator Mello.

5 SENATOR MELLO: Let me explain myself. I know Ms. Hom,  
6 respect her well.

7 I want to oppose Members of the State Board who failed  
8 to support the United States Supreme Court decision on bilingual  
9 education when they opposed the Speaker's bill, which was  
10 attempting to put it back into California. I feel my only remedy  
11 is to vote against the confirmation.

12 It's not anything personal, just philosophical. I'm a  
13 first generation from immigrant parents, and I think that our  
14 country was enriched by the great immigrants who built our  
15 country. What it is, I don't want to see these people deprived  
16 of an education in the language that they are native in, and also  
17 basically, the highest priority is to learn English.

18 CHAIRMAN ROBERTI: Senator Mello moves that the vote  
19 whereby Ms. Hom was confirmed be rescinded.

20 I should have kept the roll open for him.

21 Is there any objection? We rescind the vote without  
22 objection, and such will be the order.

23 Now Senator Craven moves that Ms. Hom be recommended for  
24 confirmation to the Floor.

25 Secretary will call the roll.

26 SECRETARY WEBB: Senator Ellis.

27 SENATOR ELLIS: Aye.  
28





1 SECRETARY WEBB: Senator Mello.

2 SENATOR MELLO: No.

3 SECRETARY WEBB: Senator Petris. Senator Craven.

4 SENATOR CRAVEN: Aye.

5 SECRETARY WEBB: Senator Roberti.

6 CHAIRMAN ROBERTI: Aye.

7 The Vote is three to one; confirmation is recommended to  
8 the Floor.

9 (Thereupon this portion of the Senate  
10 Rules Committee hearing was terminated  
11 at approximately 2:55 P.M.)

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I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this  
4<sup>th</sup> day of August, 1988.

  
EVELYN MIZAK  
Shorthand Reporter









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27 Evelyn Mizak  
28 Shorthand Reporter



APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR JIM ELLIS

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

MARIAN BAGDASARIAN, Trustee  
California State University

FRANK W. CLARK, Member  
Regents of University of California

WAYNE R. SMITH, Member  
Agricultural Labor Relations Board

DIANNA LYONS, Attorney  
United Farm Workers, AFL-CIO





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P R O C E E D I N G S

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2  
3 SENATOR CRAVEN: Let's move to Item Three in the hearing  
4 process, if we may. These are Governor's Appointees appearing  
5 today, the first of whom is Marian Bagdasarian, Trustee,  
6 California State University.

7 We'll ask you, Ms. Bagdasarian, please to come up and  
8 you may be seated if you wish, and tell us why you feel that your  
9 qualified for the position for which you have been recommended.

10 MS. BAGDASARIAN: Thank you, Mr. Chairman.

11 I'm Marian Bagdasarian. I have served four years on the  
12 Board of Trustees for the California State University, and I  
13 would like to serve another eight-year term if you can so see.

14 I have been involved in education, at least at the  
15 teaching level, for 17 years and am very interested in the area.  
16 I have served on the Educational Policy Committee on the Trustees  
17 and, of course, as Chairman of that Committee and very interested  
18 in education as a teacher myself, and have served in many of the  
19 other committees and would like to continue to serve.

20 SENATOR CRAVEN: Very good, thank you.

21 Do any of the Members have any questions of  
22 Ms. Bagdasarian?

23 SENATOR PETRIS: We're having budget problems again. Do  
24 you have any favorite budget areas that you're pushing to improve  
25 the quantity and quality of courses being offered and so forth,  
26 to accommodate more people?

27 The Cal State people tell us they're really strapped.  
28





1 MS. BAGDASARIAN: Well, that is true. We certainly hope  
2 that it is going to be possible to put back some of the budget  
3 funds that have been taken out.

4 No, I don't have any specific areas I can see it coming  
5 from.

6 SENATOR PETRIS: How about the overall total? Are you  
7 pushing the Governor on that to raise it?

8 MS. BAGDASARIAN: I certainly would, yes. I would have  
9 to say yes.

10 SENATOR PETRIS: But you haven't yet?

11 MS. BAGDASARIAN: No, we haven't. He's been gone for  
12 quite a while.

13 SENATOR PETRIS: I hope there's a letter from you  
14 waiting for him when he gets here, followed by phone calls.

15 MS. BAGDASARIAN: I will do my part.

16 SENATOR PETRIS: I'd think he'd turn to you as a Member  
17 of the Trustees who's served a term. You probably carry a lot of  
18 weight with him.

19 MS. BAGDASARIAN: Thank you. I shall certainly  
20 encourage it.

21 SENATOR PETRIS: Thank you.

22 SENATOR ELLIS: Move the confirmation.

23 SENATOR CRAVEN: Senator Ellis moves the confirmation to  
24 the Floor.

25 Anyone in the audience who wishes to speak on this  
26 issue, pro or con? There appears to be none.

27  
28



1 No further questions of the Rules Committee, call the  
2 roll.

3 SECRETARY WEBB: Senator Ellis.

4 SENATOR ELLIS: Aye.

5 SECRETARY WEBB: Senator Mello.

6 SENATOR MELLO: Aye.

7 SECRETARY WEBB: Senator Petris.

8 SENATOR PETRIS: Aye.

9 SECRETARY WEBB: Senator Craven.

10 SENATOR CRAVEN: Aye.

11 SECRETARY WEBB: Senator Roberti.

12 Four to zero.

13 SENATOR CRAVEN: Your confirmation has been recommended  
14 to the Floor with a 4-0 vote.

15 We'll keep the roll open for Senator Roberti, who  
16 probably would like to cast a vote as well.

17 MS. BAGDASARIAN: Thank you.

18 SENATOR CRAVEN: Thank you very much. Congratulations.

19 (Thereupon the Rules Committee acted  
20 upon legislative items.)

21 SENATOR CRAVEN: Let's return to Item 3.

22 Do you wish to vote on Ms. Bagdasarian? The vote was  
23 four to zero.

24 SECRETARY WEBB: Senator Roberti.

25 CHAIRMAN ROBERTI: Aye.

26 SENATOR CRAVEN: That issue is now 5-0.  
27  
28



1 (Thereupon the Rules Committee acted  
2 upon legislative items.)

3 CHAIRMAN ROBERTI: Frank W. Clark, Member of the Board  
4 of Regents, University of California.

5 Good to see you again.

6 MR. CLARK: Thank you, Mr. Chairman.

7 CHAIRMAN ROBERTI: Mr. Clark, we'll ask you what we  
8 asked you the last time, and that is why you feel you're  
9 qualified to retain this position.

10 MR. CLARK: Well, if for no other reason, I'm a fairly  
11 busy person. About 25-30 percent of my time at the present time  
12 is devoted to the matters of the University of California. In  
13 the past -- first six years of my incumbency on the Board, I  
14 devoted myself primarily to hospital matters and financial  
15 situations that they were encountering, particularly with respect  
16 to indigent and minority and underprivileged children and adults.

17 In my past two years, I have served as Chairman of the  
18 Board of Regents, and I think during that period, without  
19 sounding egotistical, Mr. Chairman, I might say I think we've had  
20 an unusual degree of cooperation between the various Regents.  
21 We've had no political factions, no personality problems. I  
22 believe that's also true with regard to the administration of the  
23 University, the President and the Chancellors.

24 And I believe that my qualifications speak for  
25 themselves in the sense that, as a hardworking practicing lawyer,  
26 I would like to continue in the capacity of serving the State,  
27 this Committee, the Legislature, the Executive Branch of  
28 government, as well as the citizens in that capacity.





1 Thank you very much.

2 CHAIRMAN ROBERTI: Thank you.

3 I think you're doing a fine job on the Board of Regents.  
4 We're glad to have you with us, even in this pro forma meetings.

5 Are there any questions? Senator Petris.

6 SENATOR PETRIS: The issue of basic research done by  
7 your University in its various branches, especially science, has  
8 been raised with respect to the treatment of projects done in  
9 cooperation with private companies which impose secrecy, and  
10 there's at least a one-year delay in the release of their  
11 findings, and sometimes longer. In fact, people have raised the  
12 fear in the academic community that those periods will become  
13 longer and longer.

14 MR. CLARK: Could I ask a question?

15 SENATOR PETRIS: Yes.

16 MR. CLARK: Are you primarily referring to our medical  
17 research?

18 SENATOR PETRIS: No, industrial; specifically steel,  
19 biotechnology and electronics in cooperation with private  
20 companies, which apparently are trying to protect their turf and  
21 their participation and trying to stretch out the release as long  
22 as they can, you know, for understandable reasons for whatever  
23 commercial advantage they might have.

24 This has caused some concern. Has that come to your  
25 attention?

26 MR. CLARK: No, Senator, it has not.

27

28



1 I would be very pleased to have the Board of Regents  
2 address the problem. I'll take it up first with the President.

3 SENATOR PETRIS: Well, like some of the other things  
4 around the Lawrence Radiation Lab, you had some problems there  
5 this past year.

6 MR. CLARK: At the Lawrence Lab, which --

7 SENATOR PETRIS: Livermore.

8 MR. CLARK: At Livermore, we've had a number of problems  
9 there.

10 SENATOR PETRIS: It's in my county as is Berkeley, so  
11 I'm interested.

12 Yes, I would like to ask you to check into that.

13 MR. CLARK: You're speaking now of the delay in the  
14 release of the research?

15 SENATOR PETRIS: Research results, yes.

16 MR. CLARK: I would be pleased to take it up with the  
17 President.

18 SENATOR PETRIS: Very briefly, I have legislation  
19 involving underrepresentation. You heard that earlier about  
20 State employees generally, but I have a bill aimed at --  
21 directed, I should say -- directed at the Cal State University  
22 system. And the only reason I didn't include UC is that you  
23 folks are exempt under the Constitution. All we can do is use  
24 directatory language and pleasantly ask if you'll do this and  
25 that.

26 The surveys show that they're below our goals also in  
27 faculty and other levels for certain minority groups. In my bill  
28



1 for Cal State, I am requesting the creation of a committee on  
2 each campus, over and above what's already in place, that will  
3 draw on various segments within the campus, plus some people off  
4 campus who are monitoring and very well informed and interested.  
5 And they're only required to meet once a year, so it's not like  
6 some bird dog that's sitting on their shoulder, but it will prod  
7 them.

8 Have you looked into the accomplishments during your  
9 tenure in that area?

10 MR. CLARK: I have, and I have been directly concerned.  
11 The Regents as a whole have been directly concerned. I don't  
12 believe that there is any subject that has been more thoroughly  
13 discussed and more thoroughly considered and is more -- is higher  
14 on the agenda for satisfactory accomplishment to the satisfaction  
15 of the Legislature than this particular issue to which you are  
16 addressing yourself now.

17 I assure you that as long as I am on the Board of  
18 Regents, it'll be of absolute highest priority.

19 SENATOR PETRIS: I look forward to those percentages  
20 coming up.

21 I notice three high level appointments made just last  
22 week in the administrative side that were all in that category,  
23 which pleased me. They're all well-qualified people who've been  
24 around within the system for some time.

25 My final question is one I asked the candidate for Cal  
26 State. As one who sits on the budget, I'm very concerned about  
27 the Governor's policy with respect to money. Now you see, we get  
28





1 our information from the administrative side of the policy making  
2 Regents, where you sit on Mount Olympus. We get it from the  
3 President, the Chancellors, and others down below. And they come  
4 and say, "Gee, you know, this thing's been cut, and it's really  
5 going to strap us. We're going to lose this professor."

6 You know, you've probably heard those too, but we hear  
7 them all the time.

8 Now, they're coming to somebody who consistently votes  
9 in favor of improving the programs at UC and others. But we've  
10 reached a level now in the process where there isn't anything  
11 more we can do. There's only one person left to talk to, and  
12 that's the Governor.

13 I have found over the years a tremendous reluctance of  
14 appointees to go back to the Governor and say, "Governor, you  
15 appointed me here to do a job. And it seems to me that you  
16 really ought to loosen up in this area and provide a little more  
17 money for this, that or the other."

18 I almost have the impression, as the Nominee today, it  
19 took her by surprise that I would ask -- it was obvious from her  
20 reaction -- that I would ask if she's leaned on the Governor a  
21 little bit. She said, "Well, I'll send a letter."

22 It seems to me that suggests two things to me. Either  
23 they're so intimidated because the Governor has said, "Hey, I  
24 want you to go in there and do a good job, but cut the damn  
25 budget. Quit bothering me about money." That's the impression I  
26 get sometimes.

27  
28



1           The other is that maybe they don't want to add money.  
2       Maybe they don't think that's the way to solve it.

3           So now I'm tossing that to you. Do you lean on the  
4       Governor from time to time and say, "Governor, you're being  
5       stingy here," in a polite way, that is, "we really need to beef  
6       up this UC budget for this and that reason."

7           MR. CLARK: I am not surprised at your question because  
8       just before I came over here, I was in a meeting with the  
9       President of the University.

10          SENATOR PETRIS: So was I.

11          MR. CLARK: And he anticipated that I would be asked  
12       this very question.

13          SENATOR PETRIS: Yes.

14          MR. CLARK: And I assured him that, for whatever my  
15       influence is, that I would certainly do my best to be sure that  
16       he cooperated with the Legislature to the extent that the  
17       University was. We're \$64 million short, as I understand, at the  
18       present time.

19          You probably know these figures as well or better than  
20       I, Senator.

21          We will do our best to work together. The Governor has  
22       been cooperative as far as we have been concerned, and so far as  
23       the University over a period of time, and I certainly have every  
24       expectation that somehow we can resolve the problem that exists  
25       today and do our best to work with you as well as the Governor.

26          CHAIRMAN ROBERTI: You could start by giving the  
27       Governor a hint that we would love to meet with him at some point  
28



1 on the matter. Meetings have been very, very sparse, and you  
2 can't have a meeting of the minds if there's no meeting.

3 Since protocol doesn't dictate that I invite the  
4 Governor to my office, he's got to invite us to his office.

5 MR. CLARK: I understand.

6 CHAIRMAN ROBERTI: We're letting the world know we're  
7 ready, willing and able to be there. There's been no invitation.

8 SENATOR PETRIS: That's very important.

9 Now, I'd like you to give this some thought. I know  
10 about your reference, and I echo what Senator Roberti said about  
11 what you've been doing personally.

12 Isn't one of the roles of an appointee at that high a  
13 level to have some kind of interchange with the Governor? It's  
14 either that, or the Governor hands down policy from on high and  
15 that's the end of it. Doesn't need a Board for that. You don't  
16 need the Regents for that, you know, as far as the fiscal end of  
17 it.

18 It seems to me the Governor should be able to look to  
19 the Members of this Regents group and the State Trustees for some  
20 feedback, for some guidance, for areas that are critical and so  
21 forth.

22 I'm sure you have a certain amount of talks with him,  
23 but I would ask you to encourage all the Regents appointed by the  
24 Governor to express themselves more frequently and more  
25 vigorously on these needs.

26 What I get from them is, "Yeah, I agree with you," and  
27 that's fine, they're telling me, but I don't think they're  
28 telling the Governor.





1 MR. CLARK: I mentioned today to the President I was  
2 hoping that Mr. Brophy, while he's with him at the convention,  
3 would be talking about the very matter that you and the Chairman  
4 have raised. So you can see, my mind is working along the same  
5 lines.

6 I also wish to take this opportunity, and then I'm  
7 available for more questions, to thank the Chairman. Senator  
8 Roberti has always been a person whom I've admired tremendously,  
9 and I thank you for those kinds words, Senator.

10 CHAIRMAN ROBERTI: You're welcome. I meant them.

11 SENATOR PETRIS: I have one final, while we're  
12 expressing admiration.

13 I do feel compelled to say that I have publicly  
14 commended the Governor in my Democratic district for the  
15 tremendous boost that he gave to the UC budget early on, and I've  
16 written him a couple of letters to that effect. So, I'm not one  
17 that says he's never done nothing.

18 But there is a crisis right now. I mean, there's at  
19 least a major problem, maybe not a crisis, but there is a serious  
20 problem right now which I feel should be solved, and can't be  
21 without his cooperation, without his at least sitting down and  
22 talking to our leadership in both Houses and both parties, and  
23 coming up with something.

24 That's not to take away from the fact that I really  
25 admire his tremendous increase in both the Cal State and the UC  
26 budgets early on.

27 MR. CLARK: If I could add one more word, Mr. Chairman.  
28



1           Our President, Dr. Gardner, in my estimation, has done  
2 as much as any President possibly in the entire history of the  
3 University to bring to the Governor's attention, and the  
4 cooperation between the President and the Governor and the  
5 Legislature is something, I believe, that's almost unprecedented  
6 in the history of the University, and I've studied the history of  
7 the University. And I'm very hopeful that with the Regents'  
8 cooperation, the President's cooperation, the cooperation of the  
9 Governor and the Legislature, we can correct and cure the fiscal  
10 problem that we encounter at the present time.

11           We will certainly and I personally will certainly do my  
12 best to carry out what I understand to be a mandate from you,  
13 Senator, and from the Chairman.

14           SENATOR PETRIS: It's a request, thank you.

15           CHAIRMAN ROBERTI: It's a request, but if you take it as  
16 a mandate, we appreciate that.

17           MR. CLARK: I do.

18           CHAIRMAN ROBERTI: Do I hear a motion?

19           SENATOR ELLIS: Move.

20           CHAIRMAN ROBERTI: Senator Ellis moves the confirmation.

21           Is there opposition in the audience? Secretary will  
22 call the roll.

23           SECRETARY WEBB: Senator Ellis.

24           SENATOR ELLIS: Aye.

25           SECRETARY WEBB: Senator Mello.

26           SENATOR MELLO: Aye.

27           SECRETARY WEBB: Senator Petris.  
28



1 SENATOR PETRIS: Aye.

2 SECRETARY WEBB: Senator Craven. Senator Roberti.

3 CHAIRMAN ROBERTI: Aye.

4 The vote is four to nothing; confirmation is recommended  
5 to the Floor.

6 MR. CLARK: Thank you very much.

7 CHAIRMAN ROBERTI: Congratulations.

8 (Thereupon the Rules Committee acted  
9 upon legislative items.)

10 CHAIRMAN ROBERTI: Governor's Appointees, Mr. Wayne R.  
11 Smith, Member, ALRB.

12 Senator Craven, why don't you take the Chair.

13 SENATOR CRAVEN: Very well, thank you.

14 Mr. Smith, we'll ask you to explain to the Members of  
15 the Rules Committee why you feel you're qualified for the  
16 appointment.

17 MR. SMITH: I'll take just a moment, if I might.

18 I'd like to express my thanks to the staff, particularly  
19 Nancy Michel, for her assistance. Unlike the two people that  
20 came before me, I am not here on a reappointment. I was unsure  
21 as to how the process works, and she was most helpful. I know  
22 how staff members don't get much recognition, and I'd like just  
23 to say thank you for that.

24 SENATOR CRAVEN: Well, we thank you for your courtesy  
25 and consideration in mentioning Nancy Michel, but perhaps not so  
26 strangely, she does get a lot of very favorable comments because  
27 she does such a wonderful job. But we appreciate it, and she  
28 does, too.





1 MR. SMITH: Thank you.

2 Briefly, I believe I'm qualified for my position. I  
3 have been with the agency since its inception in 1975. I spent  
4 the first four years when I worked with the ALRB as one of four  
5 regional field examiners, which is a supervising investigator. I  
6 worked in pretty much throughout the entire state of California,  
7 supervising the investigation of unfair labor practices.

8 From '79 to '83 I spent as a regional director for three  
9 different regions, one of four regional directors, but three  
10 different regions at that time, basically overseeing the  
11 implementation of the ALRA.

12 From '83 until I left in May of '87, my work was deputy  
13 General Counsel in the General Counsel's office. In May of '87 I  
14 left to head up a legalization organization that was a nonprofit  
15 organization formed by a variety of agricultural entities. I did  
16 that from early last year until this year, primarily assisting  
17 illegal farmworkers in obtaining the legal residency requirements  
18 under the Immigration Reform and Control Act of 1986, returning  
19 back here then in January of this last year.

20 So I think my -- with all due respect to my peers and my  
21 predecessors on the Board, I believe I'm uniquely qualified. I  
22 certainly have the most experience of anyone in the ALRB. I  
23 thoroughly understand agriculture in California, and I'm  
24 thoroughly familiar with not only the ALRA, but most of the law  
25 that's been developed by the Board through the years because I've  
26 been there as it was developed.

27 With that, that's why I believe I'm qualified.  
28



1           SENATOR CRAVEN: Let me ask you, if I may, you served as  
2 a deputy to General Counsel?

3           MR. SMITH: That's correct.

4           SENATOR CRAVEN: Is that a position that is normally  
5 held by an attorney member, or does it vary?

6           MR. SMITH: I'm not an attorney. Prior to my  
7 appointment, I believe that there were two deputies before me,  
8 and both those, I think, were lawyers.

9           SENATOR CRAVEN: That's why I asked, but I know, based  
10 on your resume, that you're a member of the Bar, but not an  
11 attorney.

12          MR. SMITH: The Employment and Labor section of the Bar.

13          SENATOR CRAVEN: Yes, which I found very interesting.  
14 You obviously have a great background.

15          Let's see what we have here. Senator Mello, do you have  
16 any questions?

17          SENATOR MELLO: I've known him for a long time. He's  
18 been fighting the battles when it was easy to fight, and he's  
19 been fighting them when they've been tough to fight.

20          SENATOR CRAVEN: I guess we can give you a couple of  
21 wound stripes for that.

22          Senator Petris.

23          SENATOR PETRIS: You've been off and on for, what, seven  
24 years with the Board? Four years in one capacity, and three  
25 years in another capacity?

26          MR. SMITH: No, I'm sorry, I was with the Board from '75  
27 until May or late April of 1987 continuously, and I served in  
28 three different capacities during those 12 years.



1           SENATOR PETRIS: There's one part of the practice, I  
2 guess it's authorized in the statute, but I'm not sure, which  
3 gives the attorney for the Board the right to settle cases  
4 pending unilaterally. And one of the major criticisms leveled at  
5 the new Board under the Governor has been that they just settle  
6 them out for a fraction of the dollar, without even going back  
7 and getting the employees' input. And there was case after case  
8 in which that happened, and it just kind of devastated them  
9 because they're cases they've been fighting for a long, long  
10 time.

11           To me, it always appeared that he was acting as an agent  
12 of the growers.

13           I forget the term, but some of those cases involved had  
14 to do with work something; I'm a little hazy on my recollection.

15           Do you think that's a fair way to administer this law?

16           MR. SMITH: Well, as a Board Member, the rulings that we  
17 would look at, the General Counsel when he's speaking as attorney  
18 for the Board, would be those that are compliance cases or those  
19 cases in which the Board has issued an order.

20           In those cases, I think it's appropriate that the Board  
21 approve, I think it has to approve or disapprove, of the  
22 settlement that comes to it.

23           So far this year, I don't know if there were more than  
24 about one unilateral settlement. Most of them were bilateral.

25           SENATOR PETRIS: So there aren't too many cases left to  
26 deal with.

27

28







1 MR. SMITH: There's quite a few compliance cases left,  
2 Senator. We have over 100.

3 SENATOR PETRIS: In prior years, last year and the year  
4 before, I guess, the peak might have been two or three years ago.  
5 They were just -- to me it was just heart breaking, and I talked  
6 to some people connected with the farmworkers and the Union. And  
7 they just felt, after all these years of trying and winning a  
8 substantial victory in the courts, and having hoped from that  
9 that things would work out in a more fair and equitable manner  
10 from their standpoint, they were just dropped down the tubes; 10  
11 cents on the dollar, 15 cents on the dollar.

12 It just seemed to me to be undermining the whole purpose  
13 of the statute.

14 Now, I realize you're not a lawyer, but is that based on  
15 a strict interpretation of the statute, or is that somewhere in  
16 the discretionary arena of the General Counsel?

17 MR. SMITH: I'm not sure I follow your question. You  
18 mean in terms of --

19 SENATOR PETRIS: What's his authority for washing out  
20 cases?

21 MR. SMITH: His authority prior --

22 SENATOR PETRIS: Without consulting who really in that  
23 kind of case is the client?

24 MR. SMITH: Prior to an actual hearing, once the hearing  
25 starts, then the authority shifts to that of the Board. And any  
26 settlement would have to be run by the Board, and the Board and  
27 approve or disapprove that settlement that the General Counsel  
28 would bring.



1 Prior to the General Counsel -- excuse me, prior to the  
2 hearing, General Counsel would have a discretion of absent abuse  
3 of that discretion to settle any matter that he so chose.

4 SENATOR PETRIS: My understanding is that it was even  
5 after hearings. The compliance order was pretty far down the  
6 line, as far as the long process is concerned.

7 MR. SMITH: Well, General Counsel certainly would have a  
8 right to enter into a settlement and try to obtain some  
9 settlement even post of the hearing, but --

10 SENATOR PETRIS: What about the unilateral --

11 MR. SMITH: -- it would be then on the approval or  
12 disapproval of the Board. So, it wouldn't be -- what General  
13 Counsel happened to do would be subject to the confirmation,  
14 affirmation, if you will, of the Board itself.

15 Does that make sense?

16 SENATOR PETRIS: Well, no, it doesn't, because you're  
17 leaving out the party most affected. The claim is a claim of the  
18 wage earner, and nobody's consulting the wage earner when these  
19 claims are washed out.

20 MR. SMITH: What I'm really saying, though, is if the  
21 General Counsel brings a unilateral settlement agreement, the  
22 Board would review that --

23 SENATOR PETRIS: It has to be approved by the Board.

24 MR. SMITH: The Board would look at a variety of  
25 factors.

26 SENATOR PETRIS: Has the Board ever rejected a tiny  
27 percentage settlement on a total --  
28



1 MR. SMITH: Sure.

2 SENATOR PETRIS: -- and said, "Go back and get more for  
3 the farmworker?"

4 MR. SMITH: Several times.

5 SENATOR PETRIS: How many?

6 MR. SMITH: I don't have the number on top of my head,  
7 but I can think of --

8 SENATOR PETRIS: Can you tell me which companies were  
9 involved?

10 MR. SMITH: Abatti, Saikhon.

11 SENATOR PETRIS: Pardon?

12 MR. SMITH: Mario Saikhon, Abatti Farms.

13 SENATOR PETRIS: Do you remember the numbers in those  
14 cases?

15 MR. SMITH: CE-79 -- I don't remember the numbers in  
16 those cases.

17 SENATOR PETRIS: I don't mean the case number, I mean  
18 the percentages of the settlement.

19 MR. SMITH: Oh, no, I don't.

20 SENATOR PETRIS: Did it go from 10 percent to 11, or 10  
21 to 30? Do you have any idea of the range?

22 MR. SMITH: The problem is that the range -- on the back  
23 pay case, it's a little more -- it's a little easier to get what  
24 percentage is owed -- I mean, excuse me, what is owed and what  
25 percentage that sum might be because you can figure out how much  
26 a person would have earned in that position, and how much he lost  
27 when he was off, how much he earned or mitigated while he was  
28





1 unemployed, unlawfully unemployed. You can get a pretty good  
2 idea of what he's owed.

3 The problem cases are the make whole cases. That may be  
4 the one that you were looking for earlier.

5 SENATOR PETRIS: Yes, right.

6 MR. SMITH: Make whole cases, because then you've got a  
7 problem of what is 100 percent; what is exactly owed. That's  
8 always been a dispute and it continues to be a dispute.

9 So, it's hard to say what percentage it wage --  
10 percentage based on one contract as the flag ship, if you will,  
11 of what should be owed, versus another contract, and that might  
12 vary by, in some cases, millions of dollars.

13 SENATOR PETRIS: Well, of course, it depends on the  
14 facts and the scope, and the number of employees.

15 MR. SMITH: That's why it's so difficult to answer in a  
16 timely fashion.

17 SENATOR PETRIS: But I see a pattern, however, where the  
18 employee comes out on the short end. Every one of the cases that  
19 have been brought to my attention, they've come out on the short  
20 end.

21 Well, let me go to another area.

22 SENATOR CRAVEN: May I just interrupt?

23 SENATOR PETRIS: Yes.

24 SENATOR CRAVEN: On that statement, "the cases brought  
25 to me," have always been by the client or worker, and they're  
26 always on the short end.

27

28



1           Isn't it equally logical that they don't come and  
2 complain when they get favorable treatment?

3           SENATOR PETRIS: Well, that's why I'm trying to get a  
4 reading on how many cases. I've asked him how many times has the  
5 Board told General Counsel, "You're being unfair to the employee.  
6 Go back and review that." Now, he's cited two or three that he  
7 remembers.

8           It's unfair to ask you to take down and get citations; I  
9 realize that. But I doubt that it's a majority of the cases. I  
10 doubt that it's even a substantial percentage where they've said  
11 "Go back, you're being unfair to the employees," given the  
12 orientation of the Board.

13           It's not an unfair statement; is it?

14           MR. SMITH: Well, Senator, a statement -- but in terms  
15 of settlement, the vast majority of settlements are approved by  
16 the Board, have been traditionally by this Board and past Boards.

17           SENATOR PETRIS: To me, it doesn't make them any more  
18 fair. If it's a bad settlement, it's a bad settlement.

19           And the unilateral action that I'm talking about, you  
20 could treat the Board and the Counsel as one. The employee out  
21 there hasn't even been asked for a referendum, or for an opinion.  
22 You know, they just do it. And they find out about it in due  
23 course when they get the notice.

24           MR. SMITH: I understand your point. All I'm saying is  
25 that the settlements, the vast majority of the settlements are  
26 bilateral. The vast majority of settlements have been approved  
27 by the Board, and that's traditional for the past 13 years,  
28



1 regardless of this Board or the Board composition three years ago  
2 or five years ago.

3 SENATOR PETRIS: Now, as a Member of the Board, what's  
4 the purpose of this statute? How do you see this statute?

5 MR. SMITH: The purpose of the statute is to -- I can  
6 cite the statute itself, but I'll just give my own terms. The  
7 purpose of the statute is to allow farmworkers the ability to  
8 freely organize for collective bargaining purposes, and it gives  
9 them the same rights, and actually a couple extra rights, that  
10 the industrial workers have under the National Labor Relations  
11 Act.

12 SENATOR PETRIS: Has that been accomplished?

13 MR. SMITH: To some degree. I think that probably --

14 SENATOR PETRIS: To what degree?

15 MR. SMITH: Well, let me finish. If you're asking me if  
16 it's been accomplished, certainly farmworkers are cognizant of  
17 the ALRA. And I think farmworkers understand their rights to  
18 negotiate collectively if they so choose.

19 The problem is, and I think with the ALRA -- the ALRB, I  
20 should say, not so much the ALRA -- versus the NLRB, is that in  
21 our -- in this arena, there are only a couple of unions; one  
22 primary union and a few other smaller unions. And so, the  
23 ability of the unions to go out into the workplace and market  
24 themselves to farmworkers is much less apparent than it is in the  
25 industrial sector, where you have a wider variety of unions, a  
26 wider variety of workers and classes, and so forth.





1       We're dealing with one worker, if you will -- I don't  
2 mean one worker, but one class of workers, agricultural workers,  
3 and only a small amount of unions. And some of the unions, even,  
4 are very specific, as for example, the Milk Workers Union and the  
5 Christian Labor Association. They're only interested in dairy  
6 people. So, you don't get very much competition. Not really a  
7 lot of work by unions out there marketing themselves --

8       SENATOR PETRIS: I understand.

9       MR. SMITH: -- to the employees.

10       SENATOR PETRIS: I think that's a very candid  
11 description.

12       In that connection, one of the major issues has been  
13 access to the farmworker. Every time the Farmworkers Union tried  
14 to get access -- not every time, but in many cases -- the  
15 employer said, "No, you don't have a right." So they had to  
16 litigate, time and again. And most of the violence came up  
17 around that issue. The employers just didn't want these guys  
18 going on the farm and doing what traditionally is done under NLRB  
19 law all over the country; they're entitled to access.

20       Do you feel you can be objective in view of the fact  
21 that you've been with the Board a long time, and you were there  
22 under both administrations? You've seen it operate in different  
23 ways.

24       MR. SMITH: I think it makes it easier for me to do  
25 that, yes.

26       SENATOR PETRIS: I have a lot of other questions, but  
27 not enough time. Thanks.

28       MR. SMITH: Thank you.



1           SENATOR CRAVEN: Thank you, Senator Petris.

2           You have approached this situation from both sides of  
3 the issue, I guess. You've been close to the problem in the  
4 field. You've been an administrator in the system, and now  
5 you're sitting as a Member of the Board.

6           Has there been, to your knowledge, any person who has  
7 had the opportunity to serve as a Board Member who has had such  
8 experience as you have?

9           MR. SMITH: Yes, there was one in front of me, Jorge  
10 Carrillo, who actually I worked with in several regions. He also  
11 came up from the field to the administrative post as the  
12 Executive Secretary, then to the Board.

13          SENATOR CRAVEN: I see.

14          MR. SMITH: I'd be the second one.

15          SENATOR CRAVEN: Yes.

16          Do you speak Spanish?

17          MR. SMITH: Yeah, I was certified bilingual, but I would  
18 not -- I would be dishonest to say I was bilingual. I can speak  
19 Spanish, but not well enough.

20          SENATOR CRAVEN: Is that an important consideration in  
21 dealing with farmworkers?

22          MR. SMITH: Absolutely, I think in the field it is. For  
23 any agent of the ALRB that works out in the field, I think you  
24 have to speak in order to converse.

25          My problem is, I haven't really had a chance to use it  
26 much in the last seven or eight years. I kind of got a little  
27 bit rebriefed, if you will, during my almost year with the  
28



1 legalization organization, and that helped me a lot. But even at  
2 that, I was administrative and didn't get the chance to talk to  
3 workers as much as I would like.

4 SENATOR CRAVEN: Well, I'm sure that there are probably  
5 some people who will want to testify on this appointment. I will  
6 ask if there's any opposition in the audience? There's a lady,  
7 very well.

8 MS. LYONS: Thank you, Senator Craven.

9 I'm Dianna Lyons, attorney for the United Farmworkers of  
10 America, AFL-CIO.

11 We oppose the appointment of Wayne Smith to the  
12 Agricultural Labor Relations Board.

13 I really need to begin with the notion that I -- well,  
14 my client's executive board and the staff of the United  
15 Farmworkers and the lawyers representing the board might have --  
16 things we've seen over the years, since '83, when Deukmejian took  
17 office and appointed Dave Stirling as General Counsel, and  
18 successively over the years, one more each year, Members of the  
19 Board, we question whether there's anything left to be gained by  
20 opposing this appointment, in spite of the fact that we feel that  
21 this is not the best person for the job, because there's very  
22 little difference between losing a case five to nothing and  
23 losing a case four to one.

24 Since January, 1988, after Pat Henning left the Board,  
25 and now five of the five Members of the Board are Deukmejian  
26 appointees, there is absolutely no hope within the United  
27 Farmworkers Union, within its legal staff, or within its  
28





1 membership, that the Act is going to be administered in any  
2 manner that resembles the legislative purpose set out in Labor  
3 Code Section 1140.2, which isn't simply, incidentally, to allow  
4 farmworkers to organize, but it is instead to protect and  
5 encourage farmworkers in the exercise of their rights to  
6 organize.

7 Now, while Mr. Smith has considerable experience with  
8 the ALRB dealing with the ALRA, I submit that that very  
9 experience, quite apart from positions he's taken on issues, but  
10 that experience itself makes this appointment a very unwise  
11 choice for the State of California, particularly in light of the  
12 budget crisis that the State faces.

13 Mr. Smith worked in a supervisory capacity on the  
14 prosecutorial side of the agency for almost 12 years, and between  
15 '83 and '87, four of those years as the deputy chief  
16 prosecutorial officer of the agency. And now he's moving, while  
17 those cases he dealt with are still slowly flowing down the  
18 pipeline, glaciating their way through the administrative  
19 process, he's moving from the prosecutorial arm of the agency to  
20 the decision making, adjudicative side of the agency.

21 In essence, being offered the opportunity of sitting in  
22 judgment on cases he decided to prosecute, cases he made the  
23 final decision about how they would be prosecuted, as during the  
24 process of the review of unfair labor practice charges being  
25 filed in the regions, and staff in those regions submitting  
26 questions to the General Counsel's office pursuant to Stirling's  
27 directive to have determination as to whether or not to issue a  
28



1 complaint made by the General Counsel's office. And in  
2 depositions in a lawsuit in federal court, Stirling testified  
3 that most of those were handled by Wayne Smith, in spite of the  
4 fact that he wasn't an attorney, incidentally.

5 But in any event, when he acted in that capacity in the  
6 prosecutorial branch of the agency, he essentially disqualified  
7 himself from fairly and dispassionately deciding any of those  
8 cases when he then moved over, after his appointment, to the  
9 adjudicative branch of the agency.

10 So I submit that paying someone \$79,000 a year of the  
11 public funds to occupy an office that he's basically disqualified  
12 from fairly participating in for the vast majority of the  
13 caseload is an unconstitutional gift of public funds. And from  
14 what I read in the papers, we don't have any to spare in any  
15 event.

16 And it's particularly troublesome to basically waste  
17 what amounts to something like \$425,000 directly over a four-year  
18 term of Mr. Smith, plus whatever would be expended on his staff,  
19 when the agency itself is doing so little that it scarcely  
20 warrants the expenditure of that amount of money for the total  
21 agency.

22 If you look at a graphic depiction of what the agency's  
23 done since 1983, when Deukmejian took office, you see that --  
24 well, actually I'll let you graphically look at a depiction; I  
25 happen to have some graphs here with me. I have a copy for each  
26 of you.



1        If you just look at this graph depicting the Board's  
2 decisions in bold line; the kind of elongated dots, which aren't  
3 quite dashes, representing the cases pending before the Board and  
4 remain open; and the real dotted line with the tiny dots,  
5 representing the Board's decisions. You'll see that, while  
6 there's always fluctuation, that commencing in fiscal year 1983,  
7 which is sort of halfway between this '82 and '83 mark and the  
8 next one, that the workload of the agency has gone sliding very  
9 much in the graphic depiction here as a relatively steep ski  
10 slope. They're doing so little. So far this year, I think  
11 they've issued eight decisions. There are five Board Members,  
12 and at least one attorney for each of them, and they're all  
13 drawing these salaries in the neighborhood of \$80,000. You know,  
14 to have that many people issue eight decisions in 8½ months is,  
15 it appears to me to be an unconstitutional gift of public funds,  
16 even without a disqualified Board agent.

17        And I say disqualified in the sense of, if you're  
18 talking about a judge, administrative law judge, or a judge in  
19 our judicial system, they're not permitted to adjudicate a case  
20 that they've participate in as counsel from either side. As the  
21 deputy chief prosecutorial officer, of course, Mr. Smith  
22 participated in the role of an attorney for one side or the  
23 other, and directed attorneys as to how they would prosecute  
24 cases.

25        So I think on that basis alone, whether you agree or  
26 disagree with anything he's done, that you have to reject the  
27 appointment and give the Governor the message that he has to  
28







1 appoint someone to that position who, at the very least, will be  
2 able to participate fully with everyone else on the Board at this  
3 extremely slow pace that they are now generating decisions.

4 Now, I don't think you should be satisfied with the very  
5 slow pace, but of course, the reason for that has to do with far  
6 more than the cases that come out of the agency. The fact that  
7 the farmworkers, the United Farmworkers, and I don't know about  
8 the other unions, but the people served, or theoretically served  
9 by the Act, no longer believe in its efficacy because it has  
10 essentially been repealed by administrative fiat, and Mr. Smith  
11 participated wholeheartedly in that process. And that's another  
12 reason why there are fewer cases coming into the pipeline to  
13 eventually glacialize their way through.

14 Now, that hasn't stopped the agency from eviscerating  
15 farmworkers' rights, because even without new cases, there have  
16 been inroads into whatever gains had been made in the past by the  
17 cases already adjudicated to undermine those accomplishments by  
18 just taking cases already decided and looking at them again.

19 Every make whole case that's ever been decided -- in a  
20 bargaining case where an employer either refused to bargain in  
21 good faith and the agency awarded what is called make whole  
22 relief, which basically gives workers the benefit of what they  
23 would have gotten if there'd been good faith bargaining because  
24 -- to make up for whatever they lost when their employer failed  
25 to bargain in good faith, or violated the law -- each one of  
26 those cases, as things stand now, regardless of whether it's  
27 already gone through the judicial process and been affirmed, all  
28



1 the way up to the United States Supreme Court in the instance of  
2 Abatti, the employers have been given the opportunity to come  
3 back and ask the Board again, now that they have a five-member  
4 majority, to decide whether or not they're going to be required  
5 to pay make whole.

6 So by the time any farmworker ever gets a make whole  
7 remedy in terms of a check in his pocket, it's going to be the  
8 next Governor's administration at the very earliest, and thus  
9 far, it's taken this agency, what, eight months already just to  
10 ask all the questions, much less to answer any.

11 It's, as I say, a repeal of the statute by  
12 administrative fiat.

13 Now, Mr. Smith's capacity as an attorney has been a  
14 subject here and was a subject in a deposition that the employer,  
15 Bruce Church, Incorporated, took in a lawsuit against the ARLB.  
16 And while he said today that he wasn't an attorney but was a  
17 member of the Bar -- and I gather a member of a Labor law section  
18 where, evidently, you don't have to be an attorney to join; you  
19 can be a law student -- the fact that Mr. Smith represented  
20 himself as a lawyer in a deposition when he was being deposed as  
21 an agent of the ALRB concerns me.

22 Now, I don't subscribe to the elitist notion that you  
23 have to be a lawyer to know anything. But I do subscribe to the  
24 notion that you have to truthfully answer the question whether or  
25 not you are one.

26 I think there's a very legitimate concern about the  
27 integrity of one who represents himself to be something they're  
28



1 not, regardless of whether it's a lawyer, doctor, Indian chief,  
2 and in this instance, in the Bruce Church deposition, Mr. Smith  
3 said he was an attorney, or rather, he was a lawyer. Then he  
4 distinguished that between being an attorney and being a lawyer.  
5 He said he was definitely a labor lawyer. Then he conceded that  
6 he only went to law school for two years. I'm not really sure  
7 how long he went to law school. He told me he only went one  
8 year, but that was prior to the deposition and he wasn't under  
9 oath.

10 I don't think whether or not he's a lawyer is what  
11 determines whether he's qualified to sit on the Board. There are  
12 other Members on the Board who aren't lawyers.

13 I think whether he tells the truth about what he is is  
14 significant, but I think the fact that he is disqualified from  
15 fulfilling the role of creating the appearance of fairness, in  
16 that he's already participated in most of the cases in some  
17 fashion that are coming down the pipeline to the agency is all  
18 the reason you need to reject the appointment.

19 And I think it's time this Committee and the Senate gave  
20 the Governor a message about its continued concern for  
21 farmworkers' rights, not just for allowing farmworkers to  
22 exercise rights the statute provides for, but to encourage and  
23 protect them by rejecting an appointment to an agency that is  
24 effectively destroying what the ALRA expressly says and was  
25 administered, at least, in an attempt to create in the State of  
26 California in the years prior to the Deukmejian administration.







1           With respect to the issue that Senator Petris' questions  
2 raised, unilateral settlements, the question posed to Mr. Smith  
3 was whether the Board had ever rejected an unilateral settlement.  
4 Indeed, it has, but not since the Deukmejian majority took over.  
5 And the fact that Stirling as General Counsel consistently,  
6 systematically entered into unilateral settlements without the  
7 knowledge, much less consent, of the charging party became common  
8 place. But at least until the Deukmejian administration took  
9 over as the administrative body, or the adjudicative body, there  
10 was a chance that raising objections with the Board would at  
11 least give the Union and the charging party, the workers, the  
12 opportunity to have some input in whatever settlement discussions  
13 took place. That's no longer true. The adjudicative body's  
14 simply a rubber stamp to the General Counsel.

15           Other disputes between the prior Board, prior to the  
16 Deukmejian majority taking over, and the General Counsel's  
17 office, many of which went to Sacramento Superior Court and up  
18 through the appellate process, involved whether the General  
19 Counsel had authority to do various things that basically the  
20 Board had asserted under the National Labor Relations Act  
21 precedent, they correctly asserted, were usurping the Board's  
22 domain. As each of those issues was raised and litigation went  
23 through the Superior Court process, and the General Counsel's  
24 office lost, and the prior majority on the Board won, many times  
25 issues of what the regulations, or the manuals that the Board has  
26 generated, said had a great deal to do with how those cases were  
27 resolved. But by the time the Deukmejian majority took over the  
28



1 Board, they just changed the manual. Any authority that the  
2 General Counsel abused because he didn't have the right to  
3 exercise it, he was simply given in the revisions of the manual  
4 when the Deukmejian majority took over.

5 Now, of course, Mr. Smith was not an appointee to the  
6 Board at the time those revisions were made, but was still a  
7 deputy General Counsel. I recall seeing him on a number of  
8 occasions in public meetings before the Board when these  
9 revisions were discussed and ultimately adopted.

10 There are a lot of specific issues on -- specific legal  
11 issues that I could take your time and address, but I won't,  
12 where the UFW and the farmworker community differ with the  
13 positions Mr. Smith has taken.

14 I would simply submit summarily the same comment I've  
15 made on a number of occasions about his former boss, Dave  
16 Stirling: he's more pro-grower than the growers. And that's a  
17 very sad situation for one of the five members of the  
18 administrative agency that supposedly protects and encourages the  
19 exercise of the farmworkers' rights.

20 While farmworkers and the United Farmworkers have very  
21 little hope left in the efficacy of this agency and really think  
22 that we would all, farmworkers and the people of the State of  
23 California, be better off if you simply suspended its operation  
24 for an appropriate number of years, if there is going to be an  
25 ALRB that is functioning in some capacity, at the very least  
26 there should be at least one member who has some background on  
27 the labor side of agriculture labor-management relations. There  
28 isn't.



1           So, I submit that you not only should but must reject  
2 the appointment.

3           If there are any questions, I'll be happy to answer  
4 them.

5           CHAIRMAN ROBERTI: No questions. Thank you, Ms. Lyons.  
6 Is there any further opposition?

7           Mr. Smith, you may conclude.

8           MR. SMITH: I don't have any answer.

9           CHAIRMAN ROBERTI: Do I hear a motion?

10          SENATOR CRAVEN: Move.

11          CHAIRMAN ROBERTI: Senator Craven moves the confirmation  
12 to the Floor.

13          SENATOR PETRIS: I'll be very brief.

14          It seems to me there ought to be a comment on this  
15 recusing yourself from cases.

16          You would not participate, I don't think, in cases where  
17 you were acting as counsel?

18          MR. SMITH: No, sir. Any cases in which I had personal  
19 participation, I would recuse myself from working on them; that's  
20 correct.

21          SENATOR PETRIS: There's such a large percentage that it  
22 doesn't leave very many for you to act on; does it?

23          MR. SMITH: No, there's about -- well, that's one thing  
24 I came up here prepared to talk about, actually. There are about  
25 115, for example, compliance cases that are pending right now in  
26 some stage or another, and of those, there are about 24 different  
27 employers on which I had active participation on. So there are a  
28 lot of them.







1           The cases are delegated by the Chairman to -- in  
2 somewhat equal amounts to each of the five Board Members. If I  
3 -- if you just say one-fourth of them I can't work on, I could  
4 still work on my fair share of the cases and not work on that  
5 one-fourth, and do as much work as any other Board Member; do my  
6 fair share, if you will, without having to violate that. I do  
7 not intend to do that.

8           CHAIRMAN ROBERTI: Senator Craven's motion is before us.  
9 Secretary will call the roll.

10          SECRETARY WEBB: Senator Ellis. Senator Mello.

11          SENATOR MELLO: Aye.

12          SECRETARY WEBB: Senator Petris.

13          SENATOR PETRIS: No.

14          SECRETARY WEBB: Senator Craven.

15          SENATOR CRAVEN: Aye.

16          SECRETARY WEBB: Senator Roberti.

17          CHAIRMAN ROBERTI: No.

18          SENATOR CRAVEN: Would you please hold the roll open.

19          CHAIRMAN ROBERTI: Senator Craven moves that the call be  
20 placed. Without objection such will be the order.

21                   (Thereupon the Rules Committee acted  
22                   upon legislative items.)

23          CHAIRMAN ROBERTI: The call is lifted on Mr. Smith; call  
24 the roll.

25          SECRETARY WEBB: Senator Ellis.

26          SENATOR ELLIS: Aye.  
27  
28



1 CHAIRMAN ROBERTI: The vote is three to two;  
2 confirmation is recommended to the Floor.

3 (Thereupon this portion of the Senate  
4 Rules Committee hearing was terminated  
5 at approximately 4:35 P.M.)

6 --oo0oo--  
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CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this  
18<sup>th</sup> day of August, 1988.

  
EVELYN MIZAK  
Shorthand Reporter









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SENATE RULES COMMITTEE

STATE OF CALIFORNIA

*Legislature*



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SACRAMENTO, CALIFORNIA

AUGUST 25, 26 & 31, 1988

Reported by:

Evelyn Mizak  
Shorthand Reporter





APPEARANCESMEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman  
SENATOR WILLIAM CRAVEN, Vice Chairman  
SENATOR JIM ELLIS  
SENATOR HENRY MELLO  
SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer  
PAT WEBB, Committee Secretary  
RICK ROLLENS, Consultant on Bill Referrals  
NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

JOHN R. SULLIVAN, Administration Director  
Division of Industrial Accidents  
BRIAN HATCH, Legislative Advocate  
California Professional Firefighters  
BARBARA BURKE, Judge  
Workmans Compensation Appeals Board  
CLAYTON ROBINS, Judge  
Workmans Compensation Appeals Board  
WENDELL PHILLIPS  
California Council of Police and Sheriffs  
WILLIE WASHINGTON  
California Manufacturers Association



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P R O C E E D I N G S

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CHAIRMAN ROBERTI: The next is Mr. John Sullivan, Administrative Director for the Division of Industrial Relations.

Mr. Sullivan, we'll ask you what we ask all the Governor's Appointees, and that is why you're qualified to assume this position?

MR. SULLIVAN: Thank you, Senator. Thank you, Members.

I believe I'm qualified to serve in this position by dint of my over 30 years of working in the Workers Compensation community.

In addition to that, I've served as -- in administrative capacities with employers and in the private community with a major oil corporation. I also served for 20 months and was here before you and confirmed as a Commissioner 20 some months ago, and served as a Commissioner on the Workers Compensation Appeals Board, and having getting -- at that point, getting some judicial training. Since I'm not an attorney, I served as a layperson on the Board.

When the administrative position became available, the administration came to me and asked if I would take this job. And since I'd had some administrative background, they felt there was some need for some changes and some productivity, programs perhaps, to be put in place, and felt that perhaps I could call upon my background to help them do that.

That, of course, is what I've been engaged in in the past six or eight months as I've been sitting in this job.





1 Prior, as I say, prior to that, I operated a claim  
2 operation as a claim manager on the West Coast for a major oil  
3 corporation and managed the legal department during that period  
4 of time.

5 This job of course is --

6 CHAIRMAN ROBERTI: Could I interrupt you for one second,  
7 Mr. Sullivan.

8 MR. SULLIVAN: Sure.

9 (Thereupon the Chair addressed a  
10 Legislator on a legislative agenda  
11 item.)

12 CHAIRMAN ROBERTI: Sorry, Mr. Sullivan. Please  
13 continue.

14 MR. SULLIVAN: That's all right.

15 I guess where I left off was my entry into the  
16 bureaucracy, and that, of course, I find a bit different than  
17 being in private industry. And I'm somewhat frustrated now and  
18 then by the bureaucratic system in trying to move ahead with  
19 programs that we think will improve our system.

20 But from the standpoint of qualifications, I think over  
21 30 years in the Workers Comp. field pretty well fulfills that  
22 requirement.

23 If anyone has any questions, I'd be pleased to answer  
24 them.

25 CHAIRMAN ROBERTI: Any questions of Mr. Sullivan?  
26 Senator Petris and then Senator Mello.

7 SENATOR PETRIS: Do you want to go ahead, Senator Mello?  
8



1           SENATOR MELLO: No, go ahead.

2           SENATOR PETRIS: We've got some problems in the agency,  
3 some of which are pretty old, and some of which have been  
4 aggravated by more recent policy decisions.

5           I'm troubled by the enormous backlog and log jam. We go  
6 into this every time somebody is appointed to the Board or  
7 somebody has an administrative capacity, like you do.

8           The question of do we need more judges. There's a case  
9 in one of the offices, which happens to be in my district in  
10 Oakland, for example, Rogers vs. United Airlines, this year,  
11 January of this year. You may not be familiar with that because  
12 you haven't been there very long. The Workers Comp. Appeals  
13 Board granted reconsideration because the time filing of an  
14 objection to an Intent to Dismiss was not matched to the case  
15 file, and therefore not considered. That's very serious.

16           Now, in that office in Oakland, at that time they had 28  
17 feet of mail unmatched to the files. I don't know how in the  
18 world they can operate. I mean, it could be just one letter out  
19 of the 28 feet that would change the course of a whole case, as  
20 it did in this one.

21           Part of it has to be the lack of personnel.

22           MR. SULLIVAN: Part of it, certainly it is, Senator.  
23 There's no question about having some problems on the clerical  
24 side.

25           I think what -- you had opened up with the need for more  
26 judges, or judge teams, as they're often called.

27  
28



1 In my travels, one of the things I've tried to do is get  
2 a handle on what's really happening in our system in the six or  
3 eight months that I've been here. We have 22 offices, and I've  
4 hit 20 of them. I've failed to -- one in Eureka that I didn't  
5 get to yet, and in Salinas, I keep failing to get down there  
6 because Judge Decker and I just haven't been able to get  
7 together. He's on vacation when I'm --

8 SENATOR MELLO: It's a long ways. It's about 150 miles.

9 MR. SULLIVAN: Oh, it's pretty easy, but every time I  
10 try to get down there, we have run into some conflict. But I'll  
11 certainly be there.

12 SENATOR PETRIS: Some emergency, probably.

13 MR. SULLIVAN: Yes.

14 Some of these problems of mail, those are rather  
15 specious arguments about mail. Mail can be almost anything.

16 Most of our mail -- in most of our offices, we'll find  
17 that like 33 percent -- 30-33 percent of our mail are duplicate  
18 mail. They're very often -- most of them are medical liens.

19 This is not unopened mail. This is mail that's been  
20 opened; it's been gleaned for purposes of pulling out important  
21 papers.

22 Now, obviously, certain papers get overlooked, but for  
23 the most part, the applications get pulled out, and many of the  
24 cases are created.

25 Now, we do have some offices where we have some pretty  
26 poor management policies. And that's one of the things that I'm  
27 attacking. We've had some offices that had calendaring problems.





1 We had offices that went off -- they were setting cases last  
2 March, were setting cases in January of 1990, or trying go, until  
3 I went in and took the calendar over and recalendared everything  
4 and brought them back up and started all over again.

5 Of those cases, we found we were able to settle 25  
6 percent of those, and then move on and set them starting in  
7 August and September of this year. We're working our way out of  
8 some of these offices.

9 This particular phenomenon that you're talking about,  
10 about mail, in some offices we've had 30-40 feet of mail, and  
11 gone in there and spent \$20,000 to bring in people from all over  
12 the state to -- are pushing the mail and pushing -- what happens  
13 is, of course, it's like an aneurysm. It forces cases into  
14 another portion of the system where it begins to blow out some  
15 place else when you do things like this.

16 It didn't solve -- it solved the immediate problem, but  
17 what happened was, three to four weeks later, after we spent  
18 \$20,000 in that particular office, they were right back into the  
19 same kind of a problem again, until we developed an automation  
20 program for that to track files and track cases. And we now find  
21 that this particular phenomenon has been solved in that  
22 particular office by dint of automation.

23 SENATOR PETRIS: Let me ask you this. Forgetting now  
24 the details, and forgetting who's Governor, you're the boss, and  
25 you have a magic wand which enables you to do anything that you  
26 need to do to bring that office, that agency, to the best  
27 possible operating level.



1           What would you do?

2           MR. SULLIVAN: First of all, I don't think I'd hire more  
3 judges. The first thing I would do would be enhance our clerical  
4 staff. I would upgrade the medieval ways of doing business that  
5 I've found are going on out there.

6           SENATOR PETRIS: Does that mean computers?

7           MR. SULLIVAN: That means computers. I have right now  
8 \$1,100,000 to spend on word processors and computers. We're  
9 buying 155 of them.

10          SENATOR PETRIS: How much more do you need?

11          MR. SULLIVAN: Don't need any more to do that.

12          We will -- one of my frustrations is -- and I'm unused  
13 to the bureaucratic system of procurement. I'm so used to being  
14 able to see a problem and saying: Let's go and get it, and buy  
15 it, and take care of it.

16          But I find the procurement system in the State is a  
17 little slow for me, and I can't match up the time limits that I  
18 place on things and the time in which the procurement people that  
19 they can get them. And that frustrates me considerably, and  
20 that's one of the problems that I'm having in delivering what I  
21 intend to deliver at a particular time I want it delivered.

22          For example, we are now being wooed by the Teal -- and I  
23 don't understand. I guess it's a Teal Data System here in  
24 Sacramento.

25          SENATOR PETRIS: Yes.

26          MR. SULLIVAN: And heretofore, they -- when we  
27 approached them, they really felt that they weren't interested in  
28



1 taking on some of our computerization programs. They didn't  
2 think they could handle it.

3 Our own system does not have the capacity of putting 22  
4 offices on it. We would need \$3-4 million extra. But even to do  
5 that, then we would have to earthquake-proof a couple of  
6 buildings, and all kinds of nonproductive things.

7 The Teal people now are approaching us and telling us  
8 that perhaps they can do something for us very soon. If that  
9 would be the case, it would be a great boon to us, and we would  
10 find that we go on-line, a 22-office system, and be able to be  
11 automated very quickly.

12 SENATOR PETRIS: Are you having any discussions with  
13 them now?

14 MR. SULLIVAN: Yes, we're in the course of that right  
15 now.

16 SENATOR PETRIS: Cost figure?

17 MR. SULLIVAN: I don't have it in front of me, Senator.  
18 I just came back from --

19 SENATOR PETRIS: We provided more money in the budget,  
20 and the Governor knocked it out. I don't know if it would have  
21 covered that specific item. Almost \$11 million that he knocked  
22 out.

23 MR. SULLIVAN: It wasn't designed to cover that at all,  
24 I don't believe.

25 As a matter of fact, this is all rather new stuff that's  
26 coming up. The Teal people came to us within the past month, I  
27 believe.





1 But this problem of mail is, it makes a lot of -- it's  
2 interesting to see photos of piles of boxes of mail and things,  
3 but I go down to these offices and take off my jacket, my tie,  
4 and go into those mail rooms and find out what's there. And  
5 you'll find that -- one will find that very often that these are  
6 duplicates.

7 And in those offices where mail is a problem, the Bar  
8 very often is quite aware of this problem, certainly aware of the  
9 problem. And when they come to hearings and things, they quite  
10 often bring copies of whatever was submitted and not matched the  
11 file with it.

12 It isn't -- it makes a nice picture for someone who  
13 doesn't like the looks of it, but it's one of those things -- in  
14 Oakland, for example, we've done a little -- I've asked someone  
15 to look into this, and we could probably clear that Oakland  
16 system up in about two weeks.

17 I'm not sure that it would do anything, though, to move  
18 the calendar any faster.

19 SENATOR PETRIS: What would it take to move the calendar  
20 faster?

21 MR. SULLIVAN: In Oakland, I'm not sure of our figures  
22 in Oakland, frankly, Senator. I don't know that.

23 SENATOR PETRIS: Not just Oakland, but any office that  
24 has a backlog which you have to move?

25 MR. SULLIVAN: Many of them -- you know, some of the  
26 offices that -- we've got one office, for example, in Long Beach,  
27 a heavy load office. Probably as heavy a load as any per judge  
28



1 case -- case per judge as any office. And you can get to trial  
2 -- they're setting cases in 60 days from the date that the  
3 Declaration of Readiness to Proceed is filed, 60 days. They  
4 could set it earlier than that. I've been there and watched  
5 attorneys come up and ask for a date for trial, and they'll give  
6 the two weeks. The calendars are open for two weeks.

7 They've -- most attorneys don't want two weeks. That's  
8 too short a period of time; 30 days is too short; 45 days is too  
9 short. We've developed -- I've tried to develop a program in our  
10 Van Nuys office that was -- that's been a difficult office for  
11 many, many years because of backlogs, and they've shut down.  
12 Years ago, they used to shut for two weeks just to do mail, and  
13 that was 15 years ago.

14 We're trying to implement a program there now, and my  
15 goal is 45 days from the day of Declaration of Readiness to  
16 Proceed, you'll get a conference. If you can't resolve the  
17 matter at that conference, 30 days to a pretrial conference, and  
18 within the next 30 days, if you can't resolve it there, the next  
19 30 days you go to trial. So, we're talking about 45, 30 and 30.

20 We're finding -- I'm getting some feedback now that the  
21 45 days may be a little bit too short for the parties.

22 SENATOR PETRIS: Well, but there are times when we've  
23 talked about three or four years, so --

24 MR. SULLIVAN: Oh, yes, and there's a lot for reasons  
25 for that.

26 SENATOR PETRIS: I don't think there's a lot of  
27 criticism on that. An attorney has some problems getting people  
28 lined up, getting the doctor --



1 MR. SULLIVAN: Yes.

2 SENATOR PETRIS: -- available, and I understand that.

3 I appreciate your answers.

4 Senator Mello.

5 SENATOR MELLO: Thank you, Mr. Chairman.

6 I'm operating on the premise that the Division of  
7 Industrial Relations, and the way it's handling and administering  
8 injured workers is in shambles. And I say that from the numerous  
9 reports I get at my office from many people who are injured and  
10 hospitalized, and just lack of response from the Department, and  
11 the backlog, as Senator Petris pointed out, in trying to process  
12 them.

13 And I've been looking at this and trying to figure out  
14 what's going on. I think Mr. Rinaldi, the Director of the  
15 Department, is out to just keep not even the status quo, but let  
16 things fall back.

17 I think the Governor, and the way he's vetoed money from  
18 the budget, his lack of sensitivity to try to catch up on the  
19 problem.

20 Thirdly, when Mr. Carmody was before us here a few  
21 months ago -- Senator Petris, if you recall Mr. Carmody -- this  
22 is the same job that we rejected. Then the administration,  
23 Mr. Rinaldi, hired Mr. Carmody as a Deputy Director. He flaunts  
24 this Rules Committee who found him not qualified for the job, but  
25 he's still there, and his philosophy is prevailing, along with  
26 Mr. Rinaldi.





1 And then you come along, and you've had a stated great  
2 number of years in the system. I just don't think under this  
3 administration that we're going to see a program that will be  
4 responsive to the injured workers in California.

5 You say you don't need judges; you need clerical; you  
6 need computers.

7 People I talk to claim that they need judges; they need  
8 staff, clerical, and they have to modernize this system that's  
9 really in the horse-and-buggy days.

10 The Governor vetoed \$10.5 million appropriated by the  
11 Legislature in the 1988 budget for additional judges and clerical  
12 staff to address the backlog.

13 In previous testimony, they measure the amount of mail  
14 that they're behind in feet. Is that still the way in which --

15 MR. SULLIVAN: Oh, sure.

16 SENATOR MELLO: I'd never heard that before, even though  
17 I've been in business, I never heard that you measure mail --

18 MR. SULLIVAN: Well, that seems to be an interesting  
19 phenomenon in this particular division. They love to measure  
20 things in feet.

21 What they do, Senator, very simply, is put the mail in  
22 these boxes, like your Bekins' boxes, or whatever they are. And  
23 each box is measured as a foot or two feet, or something, and as  
24 they load them up, they come by and they start counting boxes.  
25 If you've got 30 boxes, you've got 30 feet. It's --

26 SENATOR MELLO: It's kind of funny.

27 MR. SULLIVAN: Yeah, it's a funny way of measuring mail.  
28



1 Again, you know, I could probably at any given time just  
2 walk in there and reorganize those boxes and tell you that it's  
3 not 30 feet any more; it's only 15 feet, and we could do that in  
4 about 10 minutes.

5 But, you know, it makes nice talk to say that we've got  
6 so many feet of mail. Again, much of this mail is duplicated  
7 mail; much of it is not -- we've got some offices that have these  
8 huge backlogs, or appear to have huge backlogs. I was in Santa  
9 Ana a couple of months ago, and they've got a huge backlog of  
10 mail. And I was looking at it, and I pulled up mail from the  
11 bottoms of some of these heaps and found that it was two years  
12 old.

13 SENATOR MELLO: Any checks in there?

14 MR. SULLIVAN: Oh, no, no. There's no checks or  
15 anything like -- no, no. Most of this mail, again, has already  
16 been screened. It's screened mail. Again, a third of it are  
17 medical liens. They are liens, and they are duplicated.

18 Now, what happens, very simply, is -- let me explain it  
19 briefly. A doctor will file his report and a medical bill along  
20 with it and say, you know, "You owe me \$380 for this course of  
21 treatment." And he'll file the lien. And along with that, he  
22 files a little green form that tells you that it's a lien.

23 A week later, he files another one and updates his bill,  
24 and he continues to do this, so you wind up with a stack of  
25 duplicate reports, each one containing a brand new bill, however.  
26 And so, you may have one whole box, one foot of mail, just on one  
27 -- you know, containing nice, thick reports from a doctor on one  
28 particular file.



1           This mail -- and getting back to that same example that  
2 I was telling about, about pulling out this old file -- or this  
3 old mail, I went back and found the file. It was a closed file  
4 that had been closed now for about six months. It was a closed  
5 file. And there were duplicate copies of all that in there. It  
6 was just, you know, that hadn't been trashed yet, is what  
7 happened.

8           Some of these offices, it's an awful thing to say, I  
9 suppose, but some of these offices, I feel the best thing to  
10 happen would be someone to come in and just burn all that mail  
11 and start all over.

12           Many of the offices that have these seemingly backlogs  
13 of mail are, however, current on a daily mail basis. They've  
14 developed a program that brings them current now, but they've  
15 never gone back to stop and pick up all the old stuff that is  
16 probably duplicate and may not even, you know, be pertinent to  
17 the file at the present time. That seems to be true in many  
18 offices.

19           Each office seems to have its own particular management  
20 problems.

21           SENATOR MELLO: We get about 50,000 pieces of mail a  
22 year. And I can tell you one thing: if we never opened the mail  
23 and responded back to a constituent, we wouldn't be here.

24           MR. SULLIVAN: Well, these are all opened. Almost all  
25 this is opened mail.

26           SENATOR MELLO: They're not responded to, or they're not  
27 processed in a way to implement or try to respond to what the --  
28







1 MR. SULLIVAN: Yeah, there certainly is a problem there,  
2 but we're -- you know, I don't want to gloss it over too much on  
3 you. It's a real problem, but, you know, we're not -- and I beg  
4 to differ with you on the administration's agenda about trying to  
5 strangle this program.

6 It's choking a little bit by itself, but nobody's  
7 strangling it. And we're throwing money at it periodically, but  
8 I'm not sure that money, just keeping money and resources, keep  
9 throwing it at this thing, is going to -- is the answer.

10 The answer simply is to develop some productivity  
11 programs that are available to us today, and that some of our  
12 offices are willing and able to use. We are trying to do things  
13 in a different manner. We've got problems, however, with some  
14 people who are ingrained in an old system and who kind of like it  
15 that way.

16 SENATOR MELLO: Aren't you the boss there now?

17 MR. SULLIVAN: Oh, yeah, sure.

18 SENATOR MELLO: So what have you done since you've held  
19 this position to try to modernize it?

20 MR. SULLIVAN: Well, keep in mind, Senator, I've only  
21 been here since, you know, well I was named in November. And by  
22 the time I really got on board, it was December, so it took me --  
23 it's been six or eight months now that I've been out there,  
24 trying to find really the bottom of the problem.

25 SENATOR MELLO: But you've gone through a budget year.  
26 The Governor put his budget together last year, and you were  
27 involved in his budget.  
28



1 MR. SULLIVAN: No, I wasn't involved in last year's  
2 budget program.

3 I did luck out a bit, though, that Mr. Carmody --  
4 incidentally, about Mr. Carmody. He is a very positive fellow,  
5 and being such a positive fellow, he comes on pretty strong with  
6 some of our people, and they don't like that very much. But  
7 Mr. Carmody's agenda is not Mr. Carmody's agenda [sic].  
8 Mr. Carmody's agenda is the administration's agenda, and that's  
9 my agenda. You know, it is not to strangle the system. It's to  
10 streamline and to make it responsive.

11 We handle -- 200,000 dispute resolutions a year enter  
12 our system. Close to 200,000.

13 SENATOR MELLO: My complaint is not only the mail. I've  
14 been getting complaints from people who finally call my office,  
15 after they've exhausted -- I guess they wait for somebody to come  
16 and say, "Well, now, you've been injured. Here's an application  
17 form if you want to apply." But that doesn't happen. So what  
18 happens is, people criticize the fact that there's attorneys  
19 involved, and I think the attorneys get called to come in and  
20 represent the injured worker, and then that starts the process.

21 A lot of times their homes are attached. You know, you  
22 mentioned the doctors filing these liens and upgrading their  
23 liens. I imagine -- and not only imagine because it's a known  
24 fact -- workers have come to me and shown liens against the  
25 property that they own, against their bank accounts and  
26 everything. And they're put in serious situations, even though  
27 the employer's paying for Workers Comp. Insurance.

28



1 But somehow the system is so long in getting to be  
2 responsive, because of the lack of modernization and lack of  
3 being able to respond, that they're put in jeopardy of having  
4 liens against their property; bank accounts attached, and liens  
5 by medical providers and others before finally they get the  
6 system to respond.

7 The question is, how long are we going to do this? I  
8 think you represent yourself as a very nice person here, and you  
9 appear to be sympathetic. And we're faced with confirming people  
10 of your philosophy, but there's never any change. And I'm  
11 getting frustrated that the people keep calling, the system's not  
12 responding, it's in shambles. As you point out, it's archaic and  
13 it needs modernization, yet no one comes along who is willing to  
14 bite the bullet and do it.

15 MR. SULLIVAN: Oh, well, we're doing it, Senator.

16 One of the things that I inherited, luckily, when I came  
17 on was an enhanced budget of some sort that we do have more money  
18 to spend on automation than we ever did before, and we're going  
19 ahead and spending it. It behooves us to spend it, because if we  
20 don't, we're going to lose it. So, we're modernizing.

21 But, you know, even going back and looking through some  
22 of the records over the years, this Division's been spending  
23 close to \$300,000 a year just on new equipment.

24 SENATOR MELLO: Three hundred thousand?

25 MR. SULLIVAN: Three hundred thousand, you know, just on  
26 new equipment. But you're talking about 22 offices, and throwing  
27 in typewriters from the lowest bidder, and things like this.  
28







1 Now we are going for a state-of-the-art equipment, and  
2 we have the money to buy state-of-the-art equipment, and we're  
3 going to go right ahead and do it.

4 SENATOR MELLO: Let me ask you about your response to  
5 Senator Petris.

6 The people I talk to feel that there's a need for more  
7 judges, and definitely a need for more support staff. They work  
8 as a unit, as a team, and one can't function without the other.

9 You claim we don't need the judges; we need the  
10 clerical.

11 MR. SULLIVAN: We need the support staff, yes. We  
12 probably -- certainly need more.

13 SENATOR MELLO: If you have the support staff, how are  
14 you going to expedite a case if you don't have the administrative  
15 law judge that sits there and makes a decision on the case?

16 I understand there's 25 judges that were authorized in,  
17 I think, the budget before last, that were unfilled.

18 MR. SULLIVAN: We don't have any judge positions  
19 unfilled, Senator; maybe two. We only have authorized, I think,  
20 133 judge position, and we have 128 right now, and we're filling  
21 -- I think we're in the course of interviewing right now for two  
22 or three more, so we're right up to snuff on that.

23 SENATOR MELLO: That's as of the Governor's veto. The  
24 Legislature approved some \$10½ million of additional funding for  
25 more judges, which were cut out of the budget.

26 I think the Legislature -- and I know Senator Bill  
27 Greene is one, and Senator Petris, and others have been involved  
28



1 in the workload. We made a finding, and it was approved by both  
2 Houses that there was a need for more judges. So we put up an  
3 extra \$10½ million, and that was cut out of the budget.

4 The point is, I think there's a difference. You claim  
5 there's no unfilled positions. I guess our position is there's a  
6 need quite a few more positions that were cut out by the  
7 administration that would have helped ease the backlog and also  
8 help --

9 MR. SULLIVAN: That's not my observation.

10 SENATOR MELLO: Let me just finish.

11 The frustration is, California has the highest premium  
12 for Workers Comp. in the whole nation. And we have nearly the  
13 lowest benefits. And almost weekly, I meet with both sides, and  
14 primarily business groups, agriculture groups, that are being  
15 stymied by the fact they're paying a high rate, and yet, the  
16 system doesn't respond. We have low benefits, and a long time in  
17 respond. They're all critical of the system.

18 Somehow, we should be, if we're going to have the  
19 highest premium, we ought to have the best system that pays fair  
20 benefits and also responds to it.

21 MR. SULLIVAN: Well, I think you're echoing the position  
22 of the administration regarding reform, it sounds like, Senator.

23 It's my own opinion that the system needs some reform,  
24 as apparently it is yours.

25 You know, those cases that are entering, those 200,000  
26 cases that are entering our dispute resolution program every  
27 year, with only 130 judges and probably only 115 and so of them  
28



1 really on trial basis every day, you know, 115 judges trying to  
2 handle 200,000 cases a year is a massive, massive job. And I  
3 hand it to those judges who really tackle it and do it well.

4 SENATOR MELLO: Doesn't that conflict with your  
5 statement? You say you don't need more judges, but they're being  
6 overworked?

7 MR. SULLIVAN: I'm not saying they're overworked,  
8 Senator. I'm just saying that that's their job, and many of them  
9 -- most of them are doing an excellent job at handling this.

10 The problem, one of the problems we have is simply are  
11 they really actually trying cases? The statistics, and we have  
12 reams of them and sometimes too many, frankly, tell us that 93  
13 percent of the cases that enter our system are settled before  
14 they even get to trials. So, we're only talking about settling  
15 -- or trying 7 percent of all the cases that get into our system.

16 SENATOR MELLO: Give us some time-frames then. What is  
17 the longest backlog you now have of a case that's been entered?  
18 How long does it take at some regional offices? I know some are  
19 better than others.

20 MR. SULLIVAN: Some are better than others, and it's  
21 really difficult to get a handle on that. And it's one of the  
22 things that I've been looking for.

23 SENATOR MELLO: I've heard 18 months in some portions of  
24 your --

25 MR. SULLIVAN: That could be, but it's 18 months from  
26 when? You see, it depends on where are you going to measure this  
27 from? From the time the fellow was injured? That varies from  
28 the type of injury he has.







1 I mean, you know, the time -- I think the proper time to  
2 start measuring these things, and if anybody really wants to look  
3 at this, they should look at the time when the parties say, or  
4 one of the parties said, "Here's my Declaration of Readiness to  
5 Proceed with this case. Everything is complete. We're ready to  
6 go." The fellow, the injured party, has reached his maximum  
7 improvement. He is now permanent and stationary from the  
8 standpoint of evaluating the degree of disability.

9 What are the other issues in the case is --

10 SENATOR MELLO: How long is that? What's the time  
11 measurement from that?

12 MR. SULLIVAN: That time varies in many offices, but as  
13 I was saying before, in one of the very heavy offices, Long  
14 Beach, for example, that time can be 60 days. In some offices,  
15 that time can be a year. It may be a year, but often we find  
16 that the Declaration of Readiness to Proceed is a rather specious  
17 document in itself, in that some offices are like a giant bakery.  
18 And because of the backlog, an attorney or an applicant will file  
19 his application, and right along with it will ask for -- he will  
20 file a Declaration of Readiness to Proceed saying that he's ready  
21 to proceed, even though there isn't any medical, or nothing ready  
22 to proceed. He knows now that, because he wants a date way up  
23 the line, he wants a day certain; he wants to take his number  
24 from the bakery, and then go on and do some other things, and  
25 maybe six months from now, go back and get his cake, or whatever  
26 it is.



1 But this adds to -- this is a problem that we're having  
2 in some offices, and it's a problem that we're solving. The  
3 problem is, very often in these offices that do best, backlogs  
4 begin to grow on themselves. They get backlogged by people  
5 trying shortcuts in order to ascertain a day certain, which  
6 really is not a proper way. What they do is clog up the entire  
7 calendar and get us up into January of 1990, as it did in one of  
8 our offices.

9 SENATOR MELLO: But it seems to me that --

10 MR. SULLIVAN: So it's hard to answer your question  
11 directly, you see, because --

12 SENATOR MELLO: -- you're using a time a measurement  
13 from the time of readiness. If that takes, let's say, a year in  
14 some cases, then you must have a period of time leading up to  
15 that time of readiness. It could be three months, six months or  
16 a year.

17 How is that injured worker going to exist?

18 MR. SULLIVAN: You see, that period of time, Senator is  
19 -- they really shouldn't be entering into our system until such  
20 time as a dispute exists. And this really is a voluntary  
21 program. Workers Compensation is supposed to be a voluntary  
22 program.

23 The insurance carrier is supposed to be giving benefits  
24 during that period of time, supposedly. You know, there were  
25 like 400,000 injuries in the State of California every year.  
26 Half of those enter our system. The other half somehow are taken  
27 care of. They're taken care of on a voluntary basis.



1           These cases, the 200,000 that enter our system, may come  
2 in with various kinds of issues. And that's another thing that's  
3 impacting on us in the past few years.

4           Our judges today, and I'm sure many of them will tell  
5 you that, are not hearing your simple little traumatic accident  
6 and the broken finger and the squished foot, or whatever it was.  
7 These cases are now stress-related kind of things that require  
8 two and three days. They are very often coming in with -

9           SENATOR PETRIS: Chemical cases?

10          MR. SULLIVAN: Chemical cases, we're going to start  
11 seeing number of those. They are lengthy cases, and they're very  
12 often now voluntarily accepted by the defendant. He has --  
13 sometimes we're seeing these cases that involve personnel  
14 arriving late at work and being discharged, or whatever, and then  
15 filing a stress claim, and all that kind of stuff is going on.

16          We're being burdened a little bit by this type of case  
17 that takes much more time than other ones do. So, we're having  
18 calendaring problems regarding that.

19          SENATOR MELLO: Let me ask you another question.

20          I've understood from some people that work with you that  
21 they are very complimentary of your service, mainly because  
22 they've been able to contact you about a case that's been caught  
23 in this so many feet of mail, and so forth, the backlog. And  
24 then, you have gone and pulled that out of the batch that and  
25 expedited it for them.

26          Does that happen?  
27  
28







1 MR. SULLIVAN: Oh, sure, that happens. And that can  
2 happen in any office.

3 You know, if anyone were to come to me with the story  
4 that you related regarding -- we're going to lose our home,  
5 something like that is going to happen -- we have the facility of  
6 hearing that case tomorrow. I mean, we can just drop things and  
7 have it happen.

8 SENATOR MELLO: How about the people that can't reach  
9 you?

10 SENATOR PETRIS: Nobody seems to know how to do that,  
11 though. I've had complaints like that, too. It ain't happening.

12 You've got defendants, insurance companies, who are  
13 ordered to pay, and they refuse to do it. I've got a woman in my  
14 district who's been strung out for years. Surgery after surgery,  
15 and certificates from the doctor. Her doctor who's treating her  
16 said, "This woman has absolutely got to have surgery," complying  
17 with the order. The insurance company absolutely refuses to pay  
18 a nickel and nothing's done. Nothing is done.

19 There may be some procedure, but nobody knows about it.  
20 There just isn't any access.

21 MR. SULLIVAN: Well, there certainly must be. There are  
22 penalties, Senator, as you know, in the Labor Code.

23 SENATOR PETRIS: Her lawyers have reminded the  
24 Commission time and time again that there's penalties. It's just  
25 not happening.

26 MR. SULLIVAN: You mean our judges aren't assessing  
27 penalties?  
28



1           SENATOR PETRIS: Well, somebody is not enforcing the  
2 decisions.

3           This one case is so dramatic that it just makes me shake  
4 when I think about it. I'm not saying it happens every day, but  
5 it happens often enough; I get enough complaints just from my one  
6 little district.

7           MR. SULLIVAN: Right.

8           Keep in mind, Senator, that I'm -- my portion --

9           SENATOR PETRIS: Excuse the interruption.

10          MR. SULLIVAN: Surely.

11          I'm the Administrative Director, and so I don't get into  
12 the judicial aspect of it as I did as a Commissioner heretofore,  
13 in the short period of time I was there. We did expedite cases  
14 like that if we ever could.

15          Those are not the kind of things that I can get into  
16 now. I can't walk over to the Board and say, "Start moving your  
17 cases a little faster." It's really not my prerogative to do  
18 that.

19          SENATOR PETRIS: Mr. Chairman, may I have permission to  
20 interrupt Senator Mello?

21          SENATOR MELLO: I'm just about through. I was just  
22 touching on my last point.

23          SENATOR PETRIS: I'm late for another meeting I have to  
24 rush to, and I'm going to come back.

25          I'd like to ask that the roll be kept open.

26          I just want to say to Mr. Sullivan, I think he comes in  
27 under a terrible cloud. And I'm sure he has the best of  
28 intentions, and he's trying to get this thing moving.



1 But the fact is, this administration is hostile to this  
2 whole system. It's hostile to the average working man. It's  
3 hostile to trade unions, and it's following the Reagan pattern of  
4 trying to bust the unions.

5 Reagan's first act as President was to break a union,  
6 and they're all bragging about it all over the country.

7 Now in this administration, he went after the  
8 Farmworkers Union, and it dropped from a position of  
9 respectability in society, after all those fights and all,  
10 advancing the cause of the farmworker as provided for in the  
11 statute, to a shambles. I mean, it's just disgraceful what's  
12 been going on.

13 Then he turns around and he goes to OSHA and wipes that  
14 out. I mean, every act of this Governor, this administration,  
15 related to labor, related to statutes that protect the working  
16 man, have been to dismantle it, to actually flaunt the law and  
17 violate the law, not enforce, because he just doesn't like labor  
18 and doesn't like trade unions.

19 Now you come along, and you're picking at the edges with  
20 all these little details. You're trying to do the good thing;  
21 I'm sure of that. But you're operating in hostile territory. It  
22 just can't be done.

23 Rinaldi admitted before the Ways and Means Committee,  
24 Mr. Chairman, that the agenda of this administration is to  
25 destroy that agency and dismantle it so that they can reshape it  
26 in their own image, which is the image of the employers who are  
27 backing him. There's no doubt about that. He admitted to it. I  
28





1 can give you a direct quote in a public hearing in the Assembly  
2 Ways and Means Committee.

3 We're wasting our time here. I mean, that's the agenda  
4 of the administration.

5 This man was moved from Commissioner in November of last  
6 year, or October --

7 MR. SULLIVAN: November.

8 SENATOR PETRIS: That Commission hasn't been filled yet.  
9 There hasn't even been anybody nominated to take his place.

10 Why not? Well, this isn't a priority. This is just an  
11 outfit that's supposed to look after the workers' interests.  
12 What do we care about that?

13 We're spinning our wheels here, Mr. Chairman. I mean,  
14 you could bring the best intentioned person in the world, you can  
15 bring a guy in from another state -- Ohio or Pennsylvania -- big,  
16 industrial state that's got the best record in the country, you  
17 ain't going to get anywhere, because the Governor says, "Until  
18 you buy my reforms, which are the employers' reforms, I'm going  
19 to starve this agency." And that's what he's done. He's done it  
20 over and over again.

21 Now, I'm not criticizing you, but you're the guy that's  
22 been dropped into the arena. And it just seems to me you ain't  
23 going to get no place. Do you see what I mean?

24 I just think we ought to call the shot the way it is and  
25 recognize what the true agenda is. Senator Mello was asking  
26 about the agenda.

27  
28



1 His agenda is his own. He can't do his agenda. He's  
2 got to do Rinaldi's agenda. And Rinaldi does Deukmejian's  
3 agenda, and we know what that is. It's so clear on every labor  
4 front that we've encountered.

5 Now with that, I've got to run, and I'll come back and  
6 I'll ask you to keep the roll open.

7 CHAIRMAN ROBERTI: Thank you, Senator.

8 Are there any proponents who would like to talk in the  
9 audience? Yes, please come forward.

10 MR. HATCH: Mr. Chairman, Members, Brian Hatch,  
11 representing the California Professional Firefighters.

12 I'm here in support of John Sullivan's confirmation.

13 I would like to say before I start that, I'm not here to  
14 defend this administration. As a representative of organized  
15 labor who's been very directly involved in attempts to improve  
16 the Workers Compensation system in this State, I share the  
17 frustrations of Senator Petris. I also share the frustrations of  
18 other members of organized labor who have failed to be able to  
19 improve those benefits as a result of these frustrating times.

20 I do believe, however, that what you have before you is  
21 a man who I have found to be a very cooperative person; one who's  
22 willing to sit down and work out problems.

23 I first met John when I was appointed to a task force  
24 under a previous administration to try and work out the tangle of  
25 the medical-legal morass in the Workers Compensation system.  
26 That was under Governor Jerry Brown. It was a mess then, as it  
27 is now.  
28



1           That commission spent a lot of time trying to figure out  
2 better ways to move just that tiny piece of the system along. We  
3 made very little progress until I began to talk about the issues  
4 aside with John. And quite frankly, I think was as a result of  
5 his efforts that we were able to actually publish a report, and I  
6 think probably three-quarters of that report's recommendations  
7 were implemented in legislation subsequent to that.

8           In his role as Administrative Director, I've had a  
9 couple of occasions to call him. And one particular case, we had  
10 an Oakland firefighter who was dying of cancer. His doctor said  
11 he had less than two weeks to live, and he said move him home if  
12 he wants to go home, so he went home to die.

13           His employer would not -- was not willing to proceed on  
14 the Workers Compensation. It became a fixation for him.

15           I called John. I said, "It may not make any difference,  
16 but he'd like to know that in his case, his wife is being taken  
17 care of before he dies." John got on the phone. The result of  
18 that was the presiding judge called the attorney, who wasn't  
19 particularly ready to proceed either, and they provided for a bed  
20 depositions to be taken so that the record could be preserved in  
21 that case.

22           That leads me to one other part of this that I'm  
23 beginning to find frustrating. In all these discussions that  
24 we've had around here, sometimes I begin to think we don't talk  
25 to enough people outside that do it, so I've been digging into  
26 cases.

27  
28





1 I'm not an attorney, and I don't, you know, pretend to  
2 know what an attorney's supposed to know. But what I find in  
3 most of the cases where we just make a few calls to try and help  
4 some firefighters get their cases unbogged, we find that the  
5 applicant attorney in many cases is not paying attention to it  
6 because he's got two or three assistants that are nonlawyers that  
7 are, you know, shuffling papers back and forth. And they just  
8 simply aren't on top of it.

9 And I think what we have here is a whole system that's  
10 so bogged down, nobody's paying attention to business, and it's  
11 like a big laundromat, you know. Everything kind of just keeps  
12 going around in circles.

13 Back to the point of why I'm here, John is the sort of  
14 person I think is very sincere in his efforts to try and make  
15 things better. To the extent that he can do so, I think, within  
16 the administration he works for, I think he'll do that.

17 I think we can continue to reject people until this  
18 administration is past, but I don't think that's going to help  
19 injured workers to do so.

20 SENATOR MELLO: Mr. Chairman, may I ask a question of  
21 Mr. Hatch?

22 CHAIRMAN ROBERTI: Senator Mello.

23 SENATOR MELLO: You stated the system is so bogged down,  
24 no one's paying attention to business. I'm trying to quote you  
25 directly.

26 If it's that bad off, what's your solution for fixing  
27 it?  
28



1 MR. HATCH: Well, Senator, I've been advocating a whole  
2 range of things to change and make that system better, and it  
3 would take me hours and hours to go over that. I've been doing  
4 that in conjunction with Mr. Henning and Mr. O'Hara from the  
5 Teamsters for over two years now. We've been unable to reach a  
6 final agreement with the employers on how to do that.

7 That's not his fault, you know. The fact that we  
8 weren't able to work something out, he's just been thrown into  
9 the pit.

10 SENATOR MELLO: I didn't mean on the legislative aspect.  
11 I'm talking about on the administrative aspect of the system,  
12 which I think is bogged down, admittedly by --

13 MR. HATCH: Correct, it is bogged down. This system  
14 doesn't work.

15 SENATOR MELLO: Are we going to keep quarterbacking a  
16 team that can't win and is bogged down, or do we get a new  
17 quarterback in there and try to run the ball?

18 MR. HATCH: I'm not here to ask for an endorsement of  
19 Deukmejian for Governor. I'm just here to ask for this gentleman  
20 to be confirmed I think he's sincere, and he'll do a good job to  
21 the extent he's allowed to.

22 SENATOR MELLO: Thank you.

23 CHAIRMAN ROBERTI: Thank you, Mr. Hatch.

24 Is there opposition in the audience? Please come  
25 forward.

26 MS. BURKE: Senators, my name is Barbara Burke, and I'm  
27 a Workers Compensation Judge at the Los Angeles office of the  
28 State Workers Compensation Appeals Board.



1 I'm here as an individual and not as a representative of  
2 any group or organization.

3 I'm opposed to Mr. Sullivan's confirmation as  
4 Administrative Director for the reasons I stated in my letter to  
5 you. I won't read that letter to you now.

6 I know of no WCAB employee who believes that  
7 Mr. Sullivan is the Administrative Director in fact. We all know  
8 that the Carmody is running the day-to-day operations of the  
9 WCAB, and Mr. Rinaldi directs and controls Mr. Carmody.

10 The notion has caught hold somehow that Mr. Sullivan is  
11 not accountable because he doesn't have any authority. If one  
12 doesn't have authority, one doesn't have responsibility.

13 But that's not the case. He is the top man in our  
14 department. He has the power of this department. He has  
15 accepted the responsibility of the position, and he took the same  
16 oath and you and I took, to uphold the Constitution and uphold  
17 the laws of this State.

18 His acts and omissions in his work are the things he is  
19 responsible for, just as you and I are responsible for our acts  
20 and omissions. Passing on lies about the status of equipment  
21 orders, and taking clerks away from an office that deserves them  
22 more than any other State office in the system, cannot be excused  
23 with the explanation that he was just following orders.

24 By deferring to Mr. Rinaldi, who's been frank about his  
25 intention to let the WCAB deteriorate indefinitely until the laws  
26 are changed to his liking, Mr. Sullivan has chosen to serve not  
27 the public or the people of this State, but Mr. Rinaldi  
28 personally.







1 I'm here because the single most important vote you will  
2 cast in Workers Compensation this year will be Mr. Sullivan's  
3 confirmation. Whatever the laws in Workers Compensation are or  
4 will be, we now know, we should all know by now, that the  
5 accountability of the administrator of those laws is more  
6 important than the laws themselves. So long as the  
7 Administrative Director has to account to someone, to you, for  
8 his failure to even try to make the Workers Compensation system  
9 work or to follow the laws, there is some likelihood that the  
10 WCAB will be kept functioning, albeit at an unacceptably poor  
11 level.

12 If you confirm Mr. Sullivan, the circle will be  
13 complete. There is no longer anybody who's accountable to you  
14 for the failures to try to make this system work. And what that  
15 means is that you will be giving Mr. Rinaldi your stamp of  
16 approval for his conduct for the outlaw mentality that's been  
17 running the WCAB. And you will be giving Mr. Rinaldi carte  
18 blanche to do with what he will with the WCAB.

19 I suggest to you that that's the end of the WCAB and the  
20 Workers Compensation system.

21 Now, I'm not for or against any laws in Workers  
22 Compensation. As a judge, I take no position of what the laws  
23 should be. But I took an oath to uphold the Constitution and the  
24 laws, the same oath you took, the same oath Mr. Rinaldi,  
25 Mr. Carmody and Mr. Sullivan took.

26 The whole point of taking an oath is to impress on the  
27 office holder the seriousness of the obligation to uphold the  
28 law.



1 If I let even so much as the high-minded, moral  
2 conviction of mine supersede or override the law when I make a  
3 decision, I have no business being on the bench, and I should be  
4 removed.

5 I think it's outrageous that Mr. Rinaldi can ignore his  
6 oath, can flaunt the laws, admit he is flaunting the laws, and  
7 get away with it. Now, he says he refuses to do his job because  
8 the present system costs business too much in California. That's  
9 like a slum lord, dictating the terms of public compensation to  
10 clean up a public nuisance that he has deliberately helped  
11 create.

12 I don't know all the reasons why Workers Compensation is  
13 so expensive in California. My purview for the last ten years  
14 plus has been at the WCAB. Before that I was an attorney for  
15 insurance companies and employers, and I knew a little bit more  
16 about what was going on, but I wouldn't presume to assume that  
17 the situations are the same.

18 I can tell you that the mess at the WCAB, the foul ups,  
19 the screw ups, the long delays, much of which can be laid at the  
20 door of Mr. Rinaldi -- not all of it, but much of it -- is  
21 responsible for increased costs to the employers. Never mind --  
22 putting aside for the moment what it costs the injured workers.  
23 I mean by that specifically the increased fees for defense  
24 attorneys, who, after all, charge by the billable event. The  
25 more billable events you have, the longer the case takes to get  
26 to conclusion, the more money is going to be made. I don't fault  
27 them for wanting to earn a living, but there's unnecessary  
28



1 expense there. There's unnecessary expense in medical-legal  
2 charges because the case takes so long, and for other reasons  
3 that can directly be laid at the door of the WCAB.

4 Medical-legal charges, for those of you who don't know,  
5 are the billings by doctors for evaluations and reports, not for  
6 treatment.

7 I tried a case last week of a fellow who was injured in  
8 1983, and the medical reports were from 1983. As it turned out  
9 in that case, there happened to be a report from 1986. Normally  
10 when I get something that old, you have reports from -- you would  
11 have had reports from '83, '84, '85, '86, because the case didn't  
12 get resolved in '83 or '84, like it should have been. In this  
13 case, nobody did much about it. The applicant's attorney kept  
14 filing mail; kept filing Requests for Hearing, and it got lost  
15 somewhere. Since it takes us months to respond, he just assumed  
16 it was in the works and then he filed duplicates -- the  
17 duplicates that Mr. Sullivan referred to.

18 As yourselves why do we have duplicates? Why there's  
19 duplicate filings? Why do people file things more than once?  
20 It's because they don't get a response. What else can they do?  
21 They can write to the presiding judge, they can call up  
22 Mr. Sullivan, but not everybody has access; not everybody wants  
23 to stick their head above the fence and take a chance, maybe, of  
24 offending someone at the WCAB. That doesn't happen, but that's  
25 the perception that people have on the outside.

26 The Governor may find someone who's capable of running  
27 the department without a deputy; someone who's motivated to try  
28 to have the WCAB run well, but Mr. Sullivan is not that person.







1 I ask you to please vote no on his confirmation. You  
2 won't regret a no vote, but we'll all rue the day if he does get  
3 appointed Administrative Director.

4 I have just briefly some comments to make on  
5 Mr. Sullivan's testimony. I'm the one that sent you the letter  
6 with the pictures. I apologize to those of you who only got  
7 photocopies of the pictures. I couldn't afford to make prints  
8 for all of you.

9 He said that a third of the mail was in liens. For  
10 those of you that got photocopies and didn't get the original,  
11 you couldn't see the color of the mail at the WCAB, where we have  
12 178 feet stacked high, stacks measuring 178 feet. I'd ask you to  
13 look at these stacks of mail.

14 Liens are green in color. Look at those and see if you  
15 think that a third of those stacks of mail are liens, a third of  
16 them are green. They aren't.

17 As for trashing documents, they can't be trashed. Why  
18 do you think we save them? They have been opened. It has been  
19 determined, supposedly, they've been screened. You can look at  
20 the tops of -- well, there are a couple of pictures there where  
21 the top documents -- and one in these boxes in the basement, one  
22 of the boxes I opened, that had Declarations of Readiness. Those  
23 are the requests for hearings. Those are all supposed to be  
24 pulled and screened before the mail gets thrown into these stacks  
25 that we aren't going to deal with.

26 There are Declarations of Readiness there. They do get  
27 lost. We're not perfect. We make mistakes.  
28



1           The documents can't be trashed. We're a court. They're  
2 court documents. You can't throw them away; you can't burn them.  
3 Eventually they have to end up with the files, or they just sit  
4 where they are.

5           I wasn't going to mention anybody's name because there's  
6 a lot of fear, so I won't mention his name, but the fellow who  
7 works in the basement, the fellow who spends his time back and  
8 forth, tells me that there are 122 boxes. There's another stack  
9 that I didn't photograph, I didn't know about.

10          I looked in the boxes, and I asked him, I said, "Are  
11 they full?" He said, "Pretty much. Not all the way to the top,  
12 but pretty much. As much as the rubber banded batches will go  
13 into the boxes." He said, "There is one box that just has a  
14 little bit in it." I didn't check that myself.

15          I mentioned him only because that is what he told me,  
16 and I thought you should know.

17          As for just throwing money at the system and hiring more  
18 people, I happen to have been an advocate up until this year of  
19 making procedural changes, making changes in the rules. I bought  
20 into the idea that we needed to streamline the system. I  
21 submitted a Merit Award proposal in 1985. I had some co-authors.  
22 The co-authors dropped out when Mr. Rinaldi made threatening  
23 noises about these proposals and where they were coming from.

24          If you've read the testimony of Mr. Rinaldi at the  
25 Assembly Ways and Means Subcommittee, he said there won't be any  
26 procedural problems addressed until the law is changed as he  
27 wishes. I know that certainly applied to my situation. The idea  
28



1 was formally rejected in 1987 with words -- and I'm paraphrasing  
2 now, it was a long response -- things are fine the way they are.  
3 If people would just follow the rules that we've got, everything  
4 would work out fine.

5 The Long Beach system has been -- well, you don't know  
6 it's a system. But there are different ways of doing things in  
7 Long Beach. There were different ways of doing things in Pomona;  
8 that was shut down by Mr. Sullivan's predecessors.

9 Long Beach has a rather, in my opinion, a vocal Bar, an  
10 active Bar, and it works. Mr. Carmody, who's not here before us  
11 today, Mr. Carmody told me in 1986, a year before his  
12 confirmation came up, that once they sorted out exactly the way  
13 they wanted to do things, the Long Beach system would be shut  
14 down. I've never heard anybody retract that and say they  
15 wouldn't do it. But I'd suggest to you that they're on their  
16 best behavior until the Administrative Director is confirmed, and  
17 until there no longer has to be anybody accountable to you.

18 As for only seven percent of the cases being tried, I am  
19 not a good judge by some people in the administration's standard  
20 because I try a lot of cases. It's just, I happen to like trying  
21 cases, so maybe I don't twist arms hard enough.

22 I don't dispute the figures that only seven percent of  
23 the cases are tried. But I'd suggest to you that an awful lot of  
24 the cases, in fact I know, an awful lot of cases are settled  
25 because the people don't want to spend three or four years in the  
26 system. They can't wait that long for their money.





1 I heard one attorney -- he wasn't speaking to me,  
2 because it was in the afternoon, and I was -- I don't have  
3 calendar in the afternoon. I work only in the morning, so I'm a  
4 part-time judge -- but I was there, carting something from one  
5 place to another. And I overheard an attorney say, "Well, you  
6 won't get \$4,000 from that judge." So they settle for that  
7 reason; they settle because they think they can do better.

8 But I know people have told me -- I have told them, you  
9 can come back for trial at the end of January. That's when I'm  
10 scheduling now, the end of January, early February, 1989. Well,  
11 let me reconsider this settlement offer. He talks to his man and  
12 he comes back. I say, "Look, if you're going to settle this case  
13 just because you can't get a trial, if your man is up against it,  
14 I can squeeze you in." But I can tell you this, I've squeezed my  
15 calendar.

16 I'm not a very good manager of my calendar, either. I  
17 have squeezed and shoehorned people in only to find that I'm  
18 bumping somebody else off the calendar.

19 I'm not typical. A lot of judges do much better at  
20 twisting arms and getting people to settle their cases.  
21 Constitutionally I'm not suited for that, and I think it's a  
22 little unfair. I think people are adults and ought to be able to  
23 make the decisions without having the judge browbeat them into a  
24 settlement.

25 But we don't have enough room on our calendars for all  
26 the people who want to try their cases, who want to have their  
27 cases heard.  
28



1           The delays -- one more comment and I'll close. The  
2 delay from declarations for a request for a hearing until the  
3 case gets set for a hearing, those are a little misleading,  
4 Senators, because you say 18 months, Senator Mello. Really, the  
5 important time, as Mr. Sullivan said, is from the time somebody  
6 is ready for a hearing until the time a trial is set. We don't  
7 measure that, and that's one of the many statistics we don't  
8 measure, because the first hearing you get before the WCAB will  
9 be a conference. All that happens at the conference is the  
10 parties get together; the judge tries to hammer out the issues  
11 and see where the parties are; the judge tries to see if the  
12 matter can be resolved. But the judge can't do anything.  
13 There's no gun; there's no incentives.

14           Speaking as a former defense attorney, you get ready for  
15 trial, for those of you who are lawyers. You get ready for  
16 trial, and that's what you gear towards.

17           For conference, you do your best, but if you don't have  
18 the incentive to try to get the case ready, to try to settle the  
19 case, to try to really move it until the matter is set for trial.  
20 And there's no gun at anybody's head for the employer who has to  
21 free loose the cash or decide to settle the case, and get all the  
22 medicals ready, until the matter is really set for trial.

23           So don't look at the statistics from Declarations of  
24 Readiness, when a party says he's ready until the first hearing,  
25 because the first hearing is a conference one. Nothing much  
26 typically happens.

27  
28



1 And sad to say, one of the problems of the unattached  
2 mail, it is not superfluous; it is not unimportant. There's an  
3 awful lot of medicals in there, and an awful lot of address  
4 notifications.

5 I've had conference calendars, these massive 25 per  
6 morning conference calendars; cattle calls, where half the people  
7 don't show up. Typically it's less than that, a quarter to a  
8 third, because they're not on the official address record. They  
9 aren't on the address record because the clerks haven't entered  
10 them yet. The clerks haven't entered them because they don't  
11 have time. They don't have the time to look at the mail, much  
12 less to enter them on the address record.

13 So we have a meeting at the conference where the  
14 applicant and his attorney show up; nobody's there. Nobody's  
15 there to talk to the other side. And all I can do is give them a  
16 trial date in January or February of 1989.

17 Thank you for the opportunity to speak to you.

18 CHAIRMAN ROBERTI: Thank you very much.

19 MS. BURKE: If you have any questions, I'd be happy to  
20 answer them.

21 CHAIRMAN ROBERTI: Yes, Senator Mello, then we're going  
22 to have to carry the hearing over again. We just can't be off  
23 the Floor as long as we are.

24 MS. BURKE: I'm sorry I took so much of your time.

25 SENATOR MELLO: Thank you, Mr. Chairman.

26 The thing that comes to mind here, when I was looking at  
27 your pictures, 178 feet or so of pictures, I thought that this  
28





1 might be the central warehouse. But I understand this is just at  
2 Long Beach?

3 MS. BURKE: No, this is Los Angeles. Senator Roberti's  
4 constituents, Senator Torres' district.

5 SENATOR MELLO: So this is only one of 22 offices?

6 MS. BURKE: That's right, but we are the largest, I  
7 believe, by some. We have 12 trial judges now.

8 SENATOR MELLO: I just did some figures here just to  
9 show the magnitude of the problem.

10 If, and the word "if" means a lot, but if every office  
11 had this much mail, times 22, that comes to 3,916 feet, which is  
12 three-fourths of a mile.

13 MS. BURKE: No, sir. I'm not privy --

14 SENATOR MELLO: Let's just say it's only half a mile.

15 MS. BURKE: I'm not privy to what the figures are.  
16 Mr. Sullivan gets -- we send our monthly statistical reports to  
17 him; 28 feet in Oakland.

18 SENATOR MELLO: Knowing this is only one office, it  
19 shows a very serious problem.

20 Now I want to ask you the real question, and then I'll  
21 stop, Mr. Chairman, in the interest of time.

22 You've heard his statement that there's not a need for  
23 more judges. The Legislature had put \$10½ million in the budget.  
24 And having 200,000 cases, he claims, there's only 115 actually  
25 sitting at one time handling 200,000 cases. That's about 1500  
26 per year if they were divided up.

27 Do you feel you need more judges or you don't?  
28



1 MS. BURKE: Yes, we do. I didn't want to -- that's  
2 brought up all the time. I thought that you were well aware of  
3 that; that's why I didn't bring it up.

4 SENATOR MELLO: I think we're well aware of it, but his  
5 testimony is just the opposite.

6 MS. BURKE: Absolutely.

7 DIA, the Division of Industrial Accidents planning team,  
8 which was composed of presiding judges and was put together by  
9 Mr. Sullivan's predecessor, Mr. Benjamin, who's the  
10 Administrative Director, recommended -- had a standard of 85  
11 Declarations of Readiness -- I'm sorry, 85 applications per month  
12 per judge in the office to keep on top of things. And as a  
13 follow-up, roughly 85 Declarations of Readiness per judge per  
14 office.

15 We're down in Los Angeles -- we should be, by the  
16 graphs, and those are rather crude graphs that I submitted to  
17 you, we should have 19-plus judges in our office, so we're down.  
18 They're down all over.

19 SENATOR MELLO: Do you think that the shortage of judges  
20 leads to the backlog that we now have?

21 MS. BURKE: There's two parts to the problem. Mr.  
22 Sullivan made reference to the team. Yes, it's part of the  
23 problem, to answer your question. It's part of the problem.

24 You do need a judge if you're going to get a hearing.  
25 Most of the cases are settled, but you have to have the hearing  
26 date before people get serious about settling it.

27 CHAIRMAN ROBERTI: Thank you very much.  
28



1 MS. BURKE: Thank you.

2 CHAIRMAN ROBERTI: We are going to recess now.

3 FROM THE AUDIENCE: May I ask a question?

4 CHAIRMAN ROBERTI: Yes.

5 FROM THE AUDIENCE: Judge Robins from Van Nuys.

6 You are going to recess at this time?

7 CHAIRMAN ROBERTI: Yes, Judge.

8 The Legislature is in one of its busiest days. We're  
9 missing so many votes that we have to get to the Floor.

10 MR. ROBINS: What time do we reconvene?

11 CHAIRMAN ROBERTI: Sometime today.

12 SENATOR MELLO: Or tonight.

13 CHAIRMAN ROBERTI: Yes, or tonight.

14 We had the same problem last year on the very same  
15 appointment, unfortunately. It's just one of those things. I  
16 don't know what else to tell you.

17 (Thereupon the hearing of the Rules

18 Committee was recessed at approximately

19 11:25 A.M.)

20 --oo0oo--  
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27  
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PROCEEDINGS, AUGUST 26, 1988

--oo0oo--

CHAIRMAN ROBERTI: The meeting will come to order.

We are going to take testimony on the appointment of Mr. Sullivan, Administrative Director of the Division of Industrial Accidents. We have taken some already; we will continue the testimony today.

The vote will be taken Monday morning, when Senator Ellis is here.

Once again, our apologies for dragging this out so mercilessly.

Are there any other individuals either in support or in opposition of the appointment in the audience? If so, please come forward, indicate your name, if you represent an organization, and then Mr. Sullivan will be able to conclude.

MR. ROBINS: Clayton Robins. I'm a Workers Compensation Juge from Van Nuys. I do not represent any formal organization.

The testimony what I heard the other day was quite disturbing to me in a number of ways. Mr. Sullivan seems to feel -- I'd like to get to this mail thing and get it over with. I know we've sort of beaten it to death, but there's some misconceptions that I think were presented.

Using Mr. Sullivan's figures of one-third of the mail consists of doctors' liens and repeat stuff, what about the other two-thirds of the mail, of the 178 feet that are in the Los Angeles office? In the Van Nuys office last year, I testified to 27 feet. A couple of months ago it was 87 feet, and it is now over a hundred feet.



1 Mr. Sullivan said that he thinks sometimes that perhaps  
2 the best thing to do would be burn it. Now that, frankly,  
3 shocked me.

4 This is mail that we need. This is not just stuff that  
5 people sent in because they felt like paying 25 cents an ounce to  
6 the federal government for carrying papers.

7 Last night I spoke with another judge from the Van Nuys  
8 office, and I told him what Mr. Sullivan had said. And he said,  
9 "Well, they just did it today." "What do you mean? They burned  
10 the mail?" He said, "Well, not really. They packed it all up,  
11 moved it upstairs and stored it. They will not work on it."

12 They are supposedly current with the mail through the  
13 16th of August in the Van Nuys office. The problem with this is,  
14 if you take this idea that you can burn the mail, store it, not  
15 work it, is that if currency becomes haphazard -- that mail was  
16 at one time current; it was coming in, and the reason that it  
17 became backlogged is because they couldn't keep it current  
18 because we don't have enough people to keep it current. So the  
19 present current mail will soon become backlogged. It may not  
20 reach 100 feet in a couple of months; it may reach 10 feet, 15  
21 feet. It will start building up.

22 Now, we have to get the back mail. This is mail that I  
23 personally need. We get -- I'd like to read something here.  
24 This is from the California Workers Compensation Inquirer, May,  
25 1988 issue, page 24. It's a very short thing that I'll read,  
26 about one sentence. It is an interview of Mr. Sullivan with the  
27 editor of the magazine with regard to the mail:  
28



1 "Oh, this is not an exaggeration.

2 This is true. I think that Mr. Russo,  
3 however, is not referring to unopened  
4 mail. In my travels I've never seen  
5 an office that had unopened mail.

6 "This mail that he's talking  
7 about as being measured in feet is  
8 generally mail that has been opened,  
9 supposedly screened, for the purposes  
10 of removing C&Rs and stipulations ..."

11 Those C&Rs are full settlement documents or stipulations to  
12 agreements as to disability.

13 "... and relatively important items  
14 for action. In some offices, it is  
15 then designated as drop mail: mail  
16 that does not necessarily have to be  
17 seen immediately by a judge, but  
18 rather just dropped into a file.

19 They do measure these in feet."

20 The quote goes on.

21 Now, I am charged with approving these Compromise and  
22 Releases and stipulations. I have to see the medical reports, or  
23 I can't determine that they're adequate. The medical reports are  
24 not in the file. They are in what Mr. Sullivan says we call drop  
25 mail.

26 Now, actually, that shows some misunderstanding on  
27 Mr. Sullivan's part of what doesn't have to be seen by the judge  
28







1 immediately. Drop mail is a no-no. We have clerks that get a  
2 little lazy when they attach the mail to the file. Instead of  
3 bringing it to the judge's attention, they put the file back in  
4 the closed stacks, so the judge never gets to see it until Lord  
5 knows what might happen later.

6 This not even drop mail. This is mail that never even  
7 reaches the file, and it gets stacked up.

8 Now we get to a hearing, a trial. The parties come in,  
9 and I am supposed to start setting up the case and get it ready  
10 for the trial. Where are the medicals? We filed them. We don't  
11 have them. They're, of course, in this mail, the originals.

12 Now we put our photocopy machine to constant use,  
13 photocopying somebody else's copies of what we should have in our  
14 file. This, of course, takes trial time. It's all lost.

15 We cannot operate without enough people working in the  
16 clerks office. Mr. Sullivan and the people that he works for  
17 will not hire enough people. That is the beginning and the end  
18 of it. He talks about that if he was going to hire anybody, he'd  
19 start out with clerks, but I haven't seen him do it.

20 Let's get over the mail situation now. I think we've  
21 talked about it enough.

22 Equipment. I have heard about these computers. I think  
23 we have one or two offices that are on line.

24 Do not confuse the computers, please, with word  
25 processors. As Judge Burke may have told you yesterday, but it  
26 was in her letter, she was told by Mr. Sullivan that in June or  
27 by the first of July, we would have word processors.



1 Mr. Sullivan told me personally earlier this year that as of the  
2 first of July, we would have word processors. They were in the  
3 budgets; they were paid for.

4 I asked him, "What machines are we going to be using?"  
5 "I can't tell you that because that could interfere with the bid  
6 process and so forth, but we're going to have them the first of  
7 July." I said, "I tell you what, I have two Apple systems at  
8 home. I will bring mine in, which I can do some of this stuff  
9 myself instead of giving it to my secretary. The time that I  
10 take in preparing it, I can punch it in on my word processor.  
11 And if you get those machines in on the first of July, I'll bring  
12 mine in and set it up."

13 There was another judge within earshot. He came up to  
14 me, and he said, "You'll never have to unplug it."

15 This is now the 26th of August. It's still sitting at  
16 home plugged in.

17 We're not going to get them. I don't believe we're  
18 going to get them, and we've heard this -- even though  
19 Mr. Sullivan has said that he's been disappointed in the  
20 purchasing process of the State, I've heard about the word  
21 processors and the computers for at least three years. The story  
22 is not any different than we got from Mr. Carmody or from  
23 Mr. Rinaldi. We're not going to get them, I don't believe. When  
24 they come in, maybe then I'll believe it.

25 Now, let's get to where I really wanted to start. This  
26 whole thing starts with two scams being pulled off on the people  
27 of this State. The first one is the so-called replacement of  
28 Mr. Carmody.



1 Now, I'm sure you know what happened here. Mr. Sullivan  
2 left the position of Commissioner and became Administrative  
3 Director. The salary that was saved was used to pay  
4 Mr. Carmody's salary as Deputy, a position that is not called for  
5 in our Table of Organization.

6 Now, there isn't anybody that I know in my line of  
7 business that doesn't believe that Mr. Carmody runs the show, and  
8 the he is the real Administrative Director. And in order not to  
9 violate Section -- I think it's 1774 of the Government Code,  
10 Mr. Sullivan signs the papers. At every meeting, people tell me  
11 that Mr. Carmody does the talking; Mr. Sullivan does the nodding.

12 Mr. Sullivan has agreed to be in that position. And  
13 with all due respect to Senator Petris, when he said the other  
14 day that he believes that Mr. Sullivan was unlucky enough, and a  
15 nice man and he inherited this bad situation.

16 I really must disagree. Mr. Sullivan bought this  
17 position. He agreed to it. He didn't just get it. It didn't  
18 just fall on his shoulders. He was willing and a willing part of  
19 it.

20 Now -- and by the way, this was done in clear defiance  
21 of your honorable House.

22 Now, the second scam is a little more local. This  
23 happened in the Van Nuys office. You'll recall that Mr. Sullivan  
24 said that there were cases that were being set all the way into  
25 1990, I think he said.

26 As far as I know, there were 289 cases set into 1989,  
27 some as late as the end of the year, but the vast majority in the  
28







1 early part of the year. The later cases were the result of the  
2 calendar clerks wanting to make it easy on themselves. It's a  
3 lot easier to pick a day way out in advance without having to  
4 check to see if there's any conflicts or anything. So they did  
5 that in some situations.

6 This started happening at about March and April, where  
7 we were setting the basic load of the cases down through December  
8 of this year, which is too far away. If we had more judges, that  
9 would not have happened.

10 Now, you may recall Mr. Sullivan's confirmation was set,  
11 I think, first for May, and then into June; it was continued to  
12 June of this year. That would have looked terrible.

13 Last year, the Senators on this Committee asked  
14 Mr. Carmody some very, very pointed questions about the delays in  
15 calendaring. I recall very well Senator Mello asking these  
16 questions.

17 If those questions had been asked in June about why were  
18 cases being set as late as December of 1988, Mr. Sullivan would  
19 have had a hard time. So what do you do under those  
20 circumstances?

21 You take those cases, and you vacate all the dates all  
22 the way back into November. And you set up a mandatory  
23 settlement conference calendar. And I was told by my presiding  
24 judge that Mr. Carmody picked me personally to head that  
25 calendar.

26 Now, everybody, I think, he knows that I testified  
27 against Mr. Carmody last year, and I doubt that he picked me  
28 because he liked me.



1 Well, I like work, and I believe in a good settlement  
2 calendar. And I wrote Mr. Sullivan a letter, and I said to him,  
3 "I think this is a good idea, but it's getting close to the time  
4 that we're going to have to start it. Could you come down and  
5 can we get the thing set up?"

6 He did, 30 cases a day, five days a week. That is not a  
7 conference calendar. Mandatory it is, because they had to be  
8 there, 12 minutes per case. No preparation, no informal ratings  
9 on a permanent disability so that the parties could bargain.

10 And the whole purpose of it was to pull back on those  
11 cases so that you wouldn't have any questions to ask.  
12 Unfortunately, his timing was wrong, and his confirmation hearing  
13 was put into August instead of June, so the question still could  
14 come.

15 Now, what has happened is this. We have an average of,  
16 I believe -- I figured this out -- I think it was  $25\frac{1}{2}$  or 26.5  
17 percent cases have settled. Now, I have to tell you that between  
18 25 and 30 percent of the cases, of those cases, would have  
19 settled if we had done absolutely nothing. The parties get  
20 together and they do some settling. And we would have had the  
21 same number of settlements if we didn't do a thing.

22 According to these figures, anywhere between 36 and 48  
23 percent went back to the trial calendar. However, they didn't  
24 give you any figures for those cases that were then rolled over  
25 onto a -- they didn't give any percentages on these figures -- as  
26 to those that were rolled over for further conference, which  
27 means that really you have -- well, just taking this top one, out  
28



1 of 123 cases here, aside for those 47 that went back to trial,  
2 and this is a low figure, 28 went back onto a conference  
3 calendar. So, you really have to add those together. And the  
4 figures -- they didn't want to publish these.

5 By the way, I tried to get the actual worksheets on  
6 this, and they were denied me. They were available; they were  
7 there. All I had to do was photo them. They were not given to  
8 me.

9 Now, the reason that I wanted the worksheets is because  
10 they broke down how many were actually settled. These show  
11 settlement of 24 percent on this one. Some are actually settled  
12 at the conference. I mean, when I sat on the conferences, a  
13 certain number were actually a settlement; papers were given to  
14 me right at the time. There were others that were promised. And  
15 of the promises, we generally get 50 percent of those.

16 So, where it says 24 percent, you should really read  
17 somewhere like 18 to 20 percent as being settled. The figures  
18 are not -- the recap of the figures are not really accurate.  
19 They don't show what really happens.

20 Now, let me tell you what the worst part of this whole  
21 thing is. The cases that were sent back to trial were given the  
22 same trial dates that were previously vacated, but it looks a lot  
23 better to have a case set on December 18th when you look at it in  
24 August than you would have in June. So the whole thing was a  
25 scam, a complete waste.

26 When I was told there was going to be 30 cases a day, I  
27 told Mr. Sullivan plain out, "It ain't gonna work." So I -- they  
28







1 decided then to divide it up, and I was told by my presiding  
2 judge that they thought that I was going to sabotage it because I  
3 didn't like it, but apparently they were projected their own  
4 method of doing things on to me. I don't sabotage things.

5 Now, talk about saving money. They are projecting a new  
6 office to be opened. That's the Glendale-Pasadena office, and  
7 they're looking around for a place in the City of Eagle Rock  
8 area. There's \$134,000 that they have put aside for an office  
9 there and another one up north of Santa Barbara. The Santa  
10 Barbara one, as I understand it, is going to have two judges; the  
11 one in Eagle Rock would have six.

12 We don't need an Eagle Rock office. It would be  
13 justified if they would hire some judges to man it, but they're  
14 not. The plan is to take some judges from the Van Nuys office,  
15 some from the Los Angeles office, or possibly to take some from  
16 other places and then shift around, but not increase the number  
17 of judges.

18 And Mr. Sullivan told me that this is because they feel  
19 that they can control an office of no more than five judges much  
20 better than they can when you have eight or nine. Well, if  
21 that's what you want to do, is control people, I guess that might  
22 be some sort of a justification.

23 But look at what it costs. First of all, you have the  
24 expense of operating the extra office. You've got your  
25 electricity, and your rent, and so forth, and then you take  
26 attorneys and have them traveling around. Again, the eastern  
27 portion of the San Fernando Valley is supposed to be put into  
28



1 that office. And I guess the western portion, or part of the Los  
2 Angeles venue will be going into that office. That means  
3 attorneys that normally practice in those offices will have to  
4 now spread themselves thinner and go to Eagle Rock.

5 Now, I would say that's okay if you had more judges and  
6 they could get their cases heard faster. So they can run around  
7 a little more; they'll make a little more -- they'll make money a  
8 little faster that way; they won't feel it so bad. But just to  
9 have them running around, without any expectation of anything  
10 earlier happening on their cases, is just a waste. And this is  
11 thrown out money.

12 I don't know how much of it was -- of the 134,000 was  
13 going to go to Eagle Rock. On the basis of six to two, I would  
14 assume that three-quarters of it. And you could spend that money  
15 and buy a few clerks to work in the Van Nuys office to work the  
16 mail. It would be helpful, believe me.

17 Mr. Sullivan seems to think that judges pro tem, through  
18 the attorneys doing voluntary work, can do case screening. They  
19 can't. They're not there long enough; they don't know what's  
20 happening in the cases.

21 Case screening should be done by our judges. They don't  
22 do the screening. It just isn't done.

23 Mr. Sullivan agreed to take the Van Nuys office and use  
24 the system that is used in the Long Beach office, that he  
25 mentioned the other day. At that office you can get to trial  
26 real fast on everything. I said, "That's fine. They got a good  
27 system. We'd like to use it."  
28



1           And then what he did was, he simply took our afternoon  
2 calendar, moved it up to the morning calendar, and we have the  
3 same number of cases that we had before, plus we have lost our  
4 decision day. We'll have some conference cases on our decision  
5 day that we should do, and we're just as loaded down, in fact  
6 probably more loaded down, because now we won't have time to do  
7 our work.

8           And then we understand that he said, well, he never  
9 really said that he was going to use the same system. However, I  
10 heard him say so.

11           These things bother me, and that's probably why I'm  
12 speaking a little bit hesitantly. I don't like to say what I'm  
13 saying, but I have to say it.

14           This administration has put the business of judging into  
15 great disrepute. And it got to the point where we actually had  
16 two attorneys, a husband and wife in practice, that filed false  
17 official documents. They apparently were charged -- they were  
18 charged with filing 14 cases with false addresses to keep the  
19 cases in the Los Angeles venue when they should have been in  
20 other places.

21           They were caught. They pleaded nolo contendere, and  
22 they were given as a form of probation the requirement that they  
23 serve as judges pro tem, each, one day a month for 36 months.

24           When the Commissioner who gave them this strange form of  
25 punishment -- you know, if you commit a misdemeanor, filing false  
26 official documents, you get made into a judge -- I don't know  
27 what we would have done if they had committed a felony; probably  
28







1 put them on the Workers Compensation Appeals Board as  
2 Commissioners.

3 But when he was asked why did you do this, he said, "I  
4 didn't know it was such an honor to be a judge." Now, he was a  
5 former judge. Now, that was -- he told that to the President of  
6 our Conference of Judges.

7 That's the kind of disrepute being a judge is under this  
8 administration. And it will keep going on as long as  
9 Mr. Sullivan, Mr. Carmody, and Mr. Rinaldi have more loyalty to a  
10 group such as the Californians for Compensation Reform than they  
11 do to their -- to the people of the State of California.

12 Now, that particular organization is dedicated to the  
13 destruction of the Workers Compensation program as we know it, so  
14 dedicated that they do not hesitate to libel people in  
15 publications. The head of that organization, president of that  
16 organization, the people that -- the man that these people have  
17 chosen as a mentor is the Chairman of May Company California.

18 A week ago last Tuesday, May Company California agreed  
19 to pay a civil fine of \$295,000 for false and misleading  
20 advertising. The Chairman of May Company California was not  
21 available for comment that day because he was attempting to sell  
22 a bill of goods to the Joint Committee on Workers Compensation on  
23 a so-called reform bill.

24 That is who these people owe loyalty to, not to their  
25 jobs as State officials. And it's a shame.

26 Senator Petris said that you were wasting your time. I  
27 don't think you're really wasting your time. I know what he  
28



1 meant. I'm sure you didn't mean you were wasting your time here,  
2 but I think you meant that it's sort of like wasting time trying  
3 to do something with this administration.

4 But I don't think you'd be wasting your time if you use  
5 it and don't confirm this man. There's an old story about a  
6 young Italian tenor who, after five encores, seemed very  
7 gratified until he found out that the audience was making him do  
8 it again and again and again until he sang it right.

9 I think that's what has to be done here. Until somebody  
10 who has enough feeling that he doesn't want to destroy this  
11 thing, that he doesn't want to go along with Mr. Rinaldi's and  
12 Mr. Carmody's game, that he says, "I'm going to do the job  
13 right," and screams about it, we are going to have problems.

14 We've got to make that appointment come about by making  
15 the job as unprofitable as possible to all the weak people that  
16 take it.

17 Now, it seems to me there's only two choices here that  
18 Mr. Sullivan has. Either he feels that he wants to go along with  
19 these things, in which case, he doesn't -- shouldn't have the  
20 job. Or, he's afraid to buck these people, in which case he  
21 shouldn't have the job. Now, that's the way it is.

22 These people -- when I say that mail is needed, I'm  
23 going to go back to this for a minute, that mail is suppressed  
24 evidence. Senator Petris mentioned a case where there was  
25 objection to a Notice of Intention to Dismiss that was not picked  
26 up, it was lost in the mail; the case was dismissed, and the  
27 Board had to grant reconsideration.

28



1 I can tell you that there was a period of time earlier  
2 this year when almost daily, I was writing reports on Petitions  
3 for Reconsideration, recommending they be granted for just that  
4 reason; case after case after case, because the mail was, in  
5 effect, suppressed by this administration.

6 Now, that's probably a misdemeanor, the suppression of  
7 evidence. When two or more people get together with the intent  
8 to keep it happening that way, that's a conspiracy and  
9 obstruction of justice, a felony.

10 Now, I feel very strongly about this. I feel that not  
11 only should you not confirm this gentleman, but that you should  
12 refer the whole mess over to the Attorney General to see what he  
13 should do about it, the whole thing from top to bottom. Because  
14 that's what's happening here.

15 The people that these people serve are not the people of  
16 the State of California. They are people that want to make a  
17 profit out of it. They want to keep their expenses down. And I  
18 don't blame them for wanting to keep the expenses down, but they  
19 got to do it legally, not illegally. Not having people fail to  
20 do their sworn duty as public servants, that's not the way we do  
21 things.

22 You want to change the law, there's a legal way to  
23 change it. You don't do it by destroying the elements of  
24 government, which you may consider may be a federal offense.  
25 It's called sedition.

26 SENATOR PETRIS: Well, that's why I made my statement.  
27  
28







1           You're not going to get an appointment out of this  
2 administration of the type you're talking about. The Governor  
3 has set the pattern. When he was Attorney General, he was  
4 charged with enforcement of law by the people in an initiative  
5 that resulted in the creation of the Coastal Commission. That  
6 law was specifically assigned to the Attorney for enforcement.

7           They had three or four lawyers in that department; I  
8 don't remember the number. He pulled the fangs of that  
9 department and moved every one of those lawyers out. There was  
10 nobody there to enforce that law.

11           It's an unfortunate pattern of administrative  
12 subversion. If you don't like the law, you either ignore it, or  
13 you undermine it. You don't come to the Legislature and say,  
14 "This is a bad law; let's repeal it or let's amend it." You just  
15 carve it up arbitrarily and illegally. It's a most unfortunate  
16 pattern that this Governor has used over and over and over again.

17           So, this is only one example, one of the most glaring,  
18 but it's just one of many examples.

19           That's why I don't have too much confidence that he's  
20 going to change his mind somewhere along the way and say, "We're  
21 going to turn this around because we're going to bring in  
22 Mr. Jones from outside, and give him a blank check, and tell him  
23 to do everything that's needed to make this operation work."

24           He doesn't want it to work. The Governor doesn't want  
25 it to work. That's why Rinaldi's there.

26           MR. ROBINS: I have to deal directly with Mr. Rinaldi  
27 and Mr. Sullivan and Mr. Carmody.  
28



1 I won't argue with you about the Governor's part in it,  
2 but I think that we do have a different Attorney General who may  
3 wish to look into this if you people will ask him to do so.

4 I think it's clear. Lord knows, Mr. Rinaldi's  
5 statements to Assemblyman Burton, saying that he was going to  
6 hold the thing hostage until they get the kind of philosophical  
7 change that they want is enough to hang them. If that isn't an  
8 admission of a violation of his duty, I don't know what is.

9 I think proving the corpus delicti would be very easy in  
10 this situation. We've got the confession. The corpus delicti  
11 can be easily proven, and we ought to prosecute.

12 SENATOR PETRIS: You're right.

13 MR. ROBINS: I could go on and on and on with things  
14 that go wrong, particularly in the Van Nuys office. You heard it  
15 from Judge Burke, that L.A. office is not that much different.  
16 Our office is half the size of the L.A. office. We've got  
17 essentially the same mail problem. We've got 100 feet of unfiled  
18 mail; they've got 178 feet. The figures are close enough.

19 It happens in every office that I know of except,  
20 possibly, the Long Beach office, and we're not allowed to use  
21 their format.

22 I don't think there's much more to say, gentlemen. I  
23 think you know my feelings about it. You've heard my  
24 recommendations.

25 If you have any more questions of me, I'm open to them.

26 CHAIRMAN ROBERTI: Any questions? Senator Mello.  
27  
28



1           SENATOR MELLO: I want to confirm very briefly, you were  
2 here yesterday when he made a statement and said, if I recall, we  
3 do not need any more Workers Comp. judges. What we need is more  
4 staff, clerical staff.

5           Judge Burke disagreed with that, and I take it you  
6 disagree with that also?

7           MR. ROBINS: Absolutely. This business of having  
8 somebody else screening cases and so forth, we get bout 60  
9 Declarations of Readiness a day in our office. The presiding  
10 judge can't screen them, so all they do is get dumped on the  
11 calendar and so forth.

12           If they gave me seven or eight of them to do a day, I  
13 could do it, but nobody else can do it. I can't just take  
14 somebody off the street. You can't have clerks do it. The  
15 judges have to do this type of thing.

16           SENATOR MELLO: How many judges do you think we need  
17 statewide?

18           MR. ROBINS: We need a 50 percent increase in judges.  
19 The 52 judges that were provided for in the budget that were cut  
20 out, that's what we need, the 52 judge teams. No question, a 50  
21 percent increase over what we have, because we've had an increase  
22 in business in that much time. The population of the State of  
23 California has increased tremendously. The Van Nuys office  
24 serves 1.3 million people.

25           SENATOR MELLO: Let me ask you another question.

26           Are there judges opening mail?  
27  
28





1 MR. ROBINS: No, we don't have time to do it. I mean,  
2 not in our office there aren't. I've heard about it in other  
3 offices that that occurs.

4 SENATOR MELLO: During the Carmody hearing, somebody  
5 represented that time should be left for hearing duties of which  
6 they're responsible for. They find themselves trying to go  
7 through the mail to pick up valuable correspondence that's needed  
8 to make a decision.

9 MR. ROBINS: Well, I have to send people out to find  
10 mail, and then they come back and say they won't even look. They  
11 clerk won't even look for it. That's the problem.

12 SENATOR MELLO: Thank you.

13 CHAIRMAN ROBERTI: Thank you very much.

14 MR. ROBINS: Thank you, sir.

15 CHAIRMAN ROBERTI: Any further opposition?

16 MR. PHILLIPS: Mr. President, Members, I am not from out  
17 of town. I'm from Sacramento.

18 It's been a long day. I will make myself available to  
19 the Committee next week, if that's your desire, for more  
20 testimony, or I can proceed now.

21 CHAIRMAN ROBERTI: I don't think we want to take more  
22 testimony Monday.

23 MR. PHILLIPS: I'll proceed.

24 My name is Wendell Phillips. I'm here today  
25 representing the California Council of Police and Sheriffs, some  
26 of its member organizations in Orange County, Sacramento. I have  
27 a letter here from the Association of Los Angeles Deputy  
28 Sheriffs.



1 Law enforcement's interest in this was demonstrated last  
2 year when we opposed the confirmation of Mr. Carmody. Following  
3 up on that opposition, I wrote letters to your body, to the  
4 Comptroller of the State of California. When Mr. Carmody was  
5 continued in his position to the Attorney General, asking for a  
6 declaration under 1774 and 1774.5, asking that Mr. Carmody be  
7 removed or that another Administrative Director be appointed, and  
8 that was eventually done.

9 Mr. Rinaldi wrote me a letter where he said that he was  
10 disappointed in the opposition of law enforcement, and wished  
11 that we'd gotten together with him to discuss our problems.

12 We did that. In January, the California Coalition of  
13 Law Enforcement Associations, which represents almost every  
14 police officer and correctional officer in the State, in a loose  
15 coalition to discuss these kinds of problems, gathered in Napa,  
16 California for a conference called the California Workers  
17 Compensation Crisis.

18 I was the coordinator of that conference, and I asked  
19 Mr. Rinaldi to come and explain to us his views and the position  
20 that he took that we, frankly, believe was in violation of the  
21 law. He did not come. He sent Mr. Sullivan. And as the  
22 coordinator of that conference, I asked Mr. Sullivan the direct  
23 question -- not what the Governor's position was on Workers  
24 Compensation, not what Mr. Rinaldi's position was on Workers  
25 Compensation -- but what Mr. Sullivan's position was on Workers  
26 Compensation.

27  
28



1 Mr. Sullivan told the entire group that, absent reform  
2 in substantive law -- and believe me, even though we're  
3 policemen, we realize there are two parts to the Workers  
4 Compensation system: the delivery system and substantive law,  
5 which provides benefits -- and Mr. Sullivan said absent changes  
6 in substantive law, there would be no reform. There would be no  
7 addressing of procedural problems.

8 He told me that he felt he had an administrative  
9 background, and a good administrator could fix the problems of  
10 the Workers Compensation system.

11 I pointed out to him at the time, as I pointed out to  
12 this Committee last year, that the Sacramento office, with which  
13 I'm most familiar, still only has two word processors; one of  
14 them which was leased to that office by my organization for \$1 a  
15 year.

16 Mr. Carmody promised word processors. He promised  
17 computers. I heard that promise reissued by Mr. Sullivan.

18 I also heard yesterday that -- what I interpreted as the  
19 attitude of, "Well, I took this over, and it was a big problem.  
20 I've just been working on it."

21 Judge Burke's letter clearly states that -- it shows in  
22 the graph that she provided that when Mr. Sullivan took over, in  
23 the Los Angeles office alone, there was 37 and a third feet of  
24 unfiled mail. As of July, there was 178 feet. That's as tall as  
25 a 15-story building of unfiled mail.

26 I was shocked to hear that that mail ought to be burned.  
27 There are -- you've seen the 8 by 10 glossies, and I won't break  
28







1 them out and pass them around again tonight. But how many -- how  
2 much human suffering, and how much misery, is contained in those  
3 files may never be known if the Los Angeles files are done with  
4 as the Van Nuys files were and boxed away and stored in an attic,  
5 not to be dealt with at all.

6 I heard Mr. Sullivan say that 30-day hearings were too  
7 fast. That shows to me an absolute lack of knowledge of how the  
8 system operates. Right now, from the time you file a DR in the  
9 Sacramento office, it takes 11 months to get to hearing.

10 The chief presiding judge of the Sacramento office spoke  
11 after Mr. Sullivan -- and we asked Mr. Sullivan to stay and  
12 listen to him. For whatever reason, Mr. Sullivan was unable to  
13 do so -- testified that it took 11 months, and that if your  
14 hearing lasted any longer than you were calendared for, the  
15 continuation of that hearing could not be had for another 7-9  
16 months.

17 I will take all the 30-day hearings from the time we  
18 file DRs. I will take all the 30-day hearings you can get me,  
19 because that's what the law says I get; 5502 says I get a hearing  
20 in 30 days, and it's 11 months. That's reality. That's what  
21 really happens.

22 We have people, not necessarily police officers, but we  
23 have people living out of their cars. We have the California  
24 CLEA, which another organization, the California Law Enforcement  
25 Association, has banded together as a trust to put hundreds of  
26 thousands of dollars out to police officers who've been denied  
27 benefits by counties and cities, who have used this delay to  
28



1 their advantage. They know that when benefits are unreasonably  
2 denied, you're 11 months away from a hearing on whether or not  
3 those benefits should be started, until your trial is held. They  
4 know that.

5 A common tactic in Sacramento, in fact I would say it's  
6 more common than not, when you come upon your hearing, your  
7 medicals are old. The County of Sacramento now files 10 months  
8 after you've filed for DR and one month from your hearing. They  
9 want a continuance because they want a new doctor's exam because  
10 the medicals are old, because the Workers Compensation system  
11 does not provide a hearing as provided by law.

12 Mr. Rinaldi's transcript -- I don't know if you've seen  
13 it, but I brought you copies that I would like to give to the  
14 Committee. I've highlighted them. This was in May before a  
15 subcommittee meeting chaired by Maxine Waters.

16 On the first page, I would have you note that  
17 Mr. Rinaldi -- and I don't know if he's under oath or not -- but  
18 for a State official to deliberately misstate the truth in front  
19 of a legislative subcommittee, to me is ground for removal. He  
20 says that:

21 "I will try to respond to it."  
22 the line I've highlighted,

23 "My understanding, in the Los Angeles  
24 office, which is one of them listed  
25 here, is that they're now current with  
26 the mail."

27 In May, there was 121 feet of unfiled mail in Los Angeles.  
28



1           Turning the page, Mr. Rinaldi, upon questioning of the  
2 Chair, after Mr. Sullivan had been there for some seven months,  
3 says:

4           "There is a mess. No question about  
5 it."

6 And he talks about the numbers of applications being filed.

7 Right above that, where I've highlighted, he says:

8           "The Workers Compensation system is,  
9 in our opinion and in the opinion of  
10 the administration and myself, in a  
11 state of disarray. There's no question  
12 about it."

13 He then says, goes on to say on the next page, he says:

14           "We believe the system needs reform,  
15 that the position of the administration  
16 has been since January of 1983 that  
17 unless we get reform, we're not willing  
18 to address resource problems or other  
19 procedural problems, and this is a  
20 position we've had."

21           That is the gist of and, in some cases, almost word for  
22 word, what Mr. Sullivan told me his personal position was five  
23 months earlier in Napa, California.

24           Assemblyman Burton says:

25           "I understand that what you're saying  
26 is that if you don't get reform, which  
27 in your mind may or may not be screwing  
28





1 the injured working person, then you're  
2 not going to address increased staff to  
3 clear up the workload under present law.  
4 Is that what I'm hearing?"

5 Ron Rinaldi:

6 "That's been our position since 1980 ..."  
7 and he's cut off. Assemblyman Burton:

8 "That's the most outrageous position  
9 there is because your job, if you took  
10 an oath, was to swear to uphold the law  
11 as it is, not as you would like it to  
12 be. I find that really outrageous. In  
13 other words, you are going to hold these  
14 people hostage until you get some kind  
15 of philosophic change in the law you want,  
16 that's what I'm hearing. Is that it?"

17 Ron Rinaldi:

18 "That's what I said. That's correct."

19 Here's the point, and again, it's been a long day.

20 CHAIRMAN ROBERTI: I think we get the point. It's very  
21 evident.

22 MR. PHILLIPS: As policemen, every once in a while --  
23 this may surprise you -- a law comes out of Sacramento we're not  
24 in love with. But we don't get the discretion, and I don't  
25 believe anybody should have the discretion that's sworn to uphold  
26 the law, to decide whether or not to enforce it, or to uphold it,  
27 or protect it, or preserve it based on whether or not they agree  
28 with it.



1           And I have two questions to put to Mr. Sullivan, which  
2 you can put to him if you like. Number one is, if he is  
3 willingly going along, starving this system to death, and holding  
4 workers hostage, then that's not really a question; that's a  
5 statement. He does not deserve confirmation. The reward for  
6 contempt of this Committee or the laws of this State cannot be  
7 confirmation.

8           If he objects now to this position, if he believes that  
9 this is wrong, then as a man of honor, he should resign. He  
10 cannot hide behind "it's a big job." He knew it was a big job  
11 when he took it, and he knew the trials and tribulations, and the  
12 trial by fire Mr. Carmody had gone through and failed.

13           And to come now, based on his statement that he's an  
14 administrator, and to look at the graph in Los Angeles alone of  
15 what's happened to this system, speaks almost louder than any  
16 words could.

17           I hope we don't burn any more mail, and I hope we don't  
18 misfile any more mail, and I hope you don't, as a Committee,  
19 don't give up on this problem because it's been hard.

20           Yeah, it's tough. The Governor's a tough act. He's  
21 shown a remarkable lack of ability to compromise, and I think  
22 that has cost many of the citizens of this State.

23           I think the Governor's a decent man. I don't know if he  
24 knows about all these problems, and if he did, I don't know if  
25 he'd act the same way.

26           But I have to say this: don't give up on us. Don't say  
27 that, well, we haven't been able to solve the problem through the  
28



1 confirmation process that's given to us by the State  
2 Constitution, and it's hopeless.

3 We're not going to give up; the police representatives  
4 are not going to give up. And the injured worker sure as hell  
5 can't give up.

6 We were told yesterday that the result -- in fact,  
7 Mr. Hatch testified for Mr. Sullivan, said that the applicants'  
8 attorneys were bungling the cases sometimes, or botching up the  
9 system.

10 I can guarantee you, my attorney that handles my  
11 members' cases, if he botches up the cases or bungles it, I can  
12 go to another attorney. I don't have another system to go to.

13 And I don't want another system to go to. I want this  
14 system. I want it to work like it used to work when it was the  
15 model, as far as I'm concerned, in the world.

16 It has to be staffed to do that, and just because  
17 Mr. Sullivan and his -- I use the term loosely -- subordinate,  
18 Mr. Carmody, and his superior, Mr. Rinaldi, don't think they have  
19 to follow the law, this Committee knows better because, as part  
20 of the Legislature, they made that law, and they know what it  
21 means when they say they want it followed.

22 Thank you.

23 CHAIRMAN ROBERTI: Thank you.

24 Are there any other people who wish to testify? Please  
25 come forward.

26 MR. WASHINGTON: Mr. Chairman, Members, my name is  
27 Willie Washington. I'm with the California Manufacturers  
28 Association.





1 We support the nomination and the confirmation of  
2 Mr. Sullivan.

3 CHAIRMAN ROBERTI: Thank you very much, Mr. Washington.  
4 Mr. Sullivan, you may conclude.

5 MR. SULLIVAN: Thank you, Mr. President and Members.

6 It's quite a late hour, and I won't take too much time  
7 in rebuttal, other than to say that it's my personal conviction,  
8 my personal opinion, and the opinion of those who work for me,  
9 and with me, including Mr. Carmody and the others, that we are  
10 clearly, this administration is clearly, not trying to strangle  
11 and kill off the system as we know it.

12 Senator, I've been in the State of California since  
13 1973, and been working with Workers Compensation bills and  
14 various other Legislatures throughout the country. And there  
15 hasn't been a year since I've been here that we haven't seen a  
16 bill labeled reform of some sort.

17 That, in some manner, tells us that we're going to do  
18 business in this jurisdiction in another way than which we're  
19 presently doing it. And every time we see one of these -- and  
20 it's a difficult problem, and there are political problems, and  
21 labor-management problems that are being wrestled with every day,  
22 and I'm sure you're probably more familiar with the pressures  
23 that go on in the Workers Comp. legislative realm, more so than I  
24 am.

25 But every bill that we've seen tells us we're going to  
26 do business differently. And so, when I voice an opinion as to  
27 what we're going to do with the system, I always have to keep in  
28



1 the back of my mind that one of these days, those bills are going  
2 to pass. And every one of them contains a way of entering the  
3 system and developing a delivery system, and benefit delivery  
4 system, without the need for our dispute resolution program,  
5 which all we're really administering here, is a dispute  
6 resolution program.

7 So what I'm really saying is, that that part of my  
8 division that talks about information and assistance officers,  
9 we're going to go in and enhance that program because we think  
10 that perhaps there's not a need to have to jump up. We're going  
11 to have to put people through a number of other hoops; perhaps  
12 through statutory penalties, perhaps a whole lot of other areas,  
13 to deliver these penalties on a voluntary basis before we even  
14 have to get to one of our judges.

15 And if we can eliminate 50 percent of those cases having  
16 to be brought up to the level of judges for dispute resolution,  
17 then one has to wonder: do we really need -- are we really going  
18 to need all these judges that we're talking about?

19 And frankly, again, I'm convinced that we do not need  
20 more judges. What we've heard here, Senators, and I think you've  
21 heard this before, and these are people who've come before you  
22 before, and they have their own axes to grind for whatever  
23 reason, they don't represent anybody but themselves, as they've  
24 said, but they have their own agendas of their own mind, and it  
25 really hasn't -- it doesn't fit -- our agenda doesn't seem to fit  
26 theirs. And I think you can see through much of this that there  
27 are more complaints, ravings, of people whose agendas just don't  
28 seem to meet ours.



1 Well, that often occurs. And when you get 130 judges  
2 working out there, we're not going to be able to please them all  
3 in a productivity type of program that we're trying to develop.

4 It's a pressure vessel, we know. And some of the  
5 programs that I'm putting in, Van Nuys, for example, is not a  
6 cast-in-concrete program. We are having to be as flexible as we  
7 can in an effort to handle these problems in the particular area  
8 where we're having pressure problems.

9 Santa Monica was a disaster area for us for a while. We  
10 have finally put what we call an on-line system, where it is  
11 computerized now. And suddenly we find that the 45 feet of mail  
12 doesn't exist now. Our mail is being filed by way of computer  
13 tracking, and suddenly things are turning around, and my  
14 presiding judge in Santa Monica, who's been screaming for more  
15 help for a long time, now comes to me and says, "Gee, maybe I'm  
16 okay."

17 What we really need is some automation and get out of  
18 this system, and we're spending it. I have, this year, for the  
19 first time, \$1,100,000 to buy word processors, computers, and  
20 we're buying them. They're on order.

21 And again, I only can reiterate that we have a problem.  
22 We're buying 150 of them, which will be given out to every one of  
23 them. This is in addition to an automated program that we are  
24 negotiating with the Teal people, I guess they're called. I'm  
25 not familiar with all the terms up here. I thought Teal was an  
26 acronym, but I guess it's a man's name.

27  
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1           That, if we tie into that system, we will now be able to  
2 tie in all of our 22 offices.

3           Our San Francisco office is automated to the extent that  
4 the clerical staff, when the people came in to see how much mail,  
5 back mail we have in San Francisco, they found it's down to one  
6 little pile on some clerk's desk, and it really didn't -- the  
7 photographers came in. It really didn't make much of an  
8 impression, so they didn't take any pictures of that one.

9           They are -- what they're doing, actually, is creating  
10 the cases for the Oakland office in our San Francisco office, and  
11 shipping them back over there. And in addition to that, setting  
12 up the hearing notices for our Santa Monica office. So we have  
13 an automated system, with less clerks, in San Francisco, no mail  
14 back up, no back up on mail at all, and yet still doing work for  
15 two other offices.

16           We're able to put this system on line, and we may very  
17 well be able to do this by the first of January. Many of these  
18 problems will just disappear, disintegrate, go away. And I not  
19 only just trust that they will, I guarantee they will once we get  
20 these systems into play.

21           So what we're hearing here is a lot of complaints about  
22 inabilities to find mail. But once, you know -- and I probably  
23 overspoke when I talk about burning it or trashing it, or  
24 whatever. But it's the impression you get when you're in the  
25 mail room, and your sleeves are rolled up, and you're looking in  
26 there and really finding out: is this productive material.

27  
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1 And so, I guess in closing, you know, we are not  
2 strangling the system. We're opening new offices, and we're  
3 opening them for the sake of injured parties who have to -- Eagle  
4 Rock, for example. Many of the people from out of that part of  
5 the San Gabriel Valley, or whatever, the Foothill communities,  
6 are having down to pay \$8 a day in Los Angeles to park, and maybe  
7 not get their hearing heard, and maybe have to go down there four  
8 or five times, never get their benefits delivered for a year. In  
9 the meantime, they're putting out parking money.

10 We're bringing an office out to where the injured  
11 workers are. And I'm trying to dig up an office, and I went out  
12 there on my own because, again, I'm frustrated by the General  
13 Services people who tell me, "Oh, you're going to have to wait a  
14 couple of years because we got to find that office for you." And  
15 I said, "No, you don't. I'm going out there myself, and I'll  
16 find my own office." And I went out. You know, the delays do  
17 frustrate me.

18 But there is no design by this administration to  
19 strangle this system. We're pouring money into it.

20 First of all, I do have a leg up on Mr. Carmody and some  
21 of my other predecessors because I walked into a little pile of  
22 money. When we talk about some computer programs that we're  
23 going to have, some machinery we're going to have by July 1st, we  
24 still have some money. Those were -- there was our electronic  
25 secretarial or transcribing system that we've put in now, and  
26 we're expanding that to all of our -- that brings down the period  
27 of time it takes for a stenographic -- hearing stenographer to  
28



1 get her material back to a judge. We've reduced that period of  
2 time from, say, 15 days now to a week in many cases.

3 So, we're cutting these things in half. And we're doing  
4 things, and we're making changes. And I'm making changes all --  
5 in every office I go to. Spend days there. I'm out in the  
6 field.

7 Frankly, I'm so pleased to still be able to have sworn  
8 Mr. Carmody in as my Deputy so he can continue to watch the store  
9 with his 19 years of experience as a bureaucrat, where my seven  
10 months really don't get me very far. And I'm pleased to have him  
11 there while I have him, and use him to his utmost.

12 As far as presiding over presiding justices things, this  
13 is a rather specious thing. I'm no more giving up my control of  
14 the Division, any more than you are, Senator Roberti, when you  
15 don't preside over the Senate Floor.

16 And the only time I haven't done that is when I was  
17 called out to open hearings, and had to preside over another  
18 hearing at the same time. And so, he took over for me.

19 These kind of things are of very little value when you  
20 come down to what is this administration doing to keep this  
21 program going. We're doing a great deal, and I'm personally  
22 doing an awful lot.

23 I gave up -- as you know, I was confirmed as a  
24 Commissioner, and I could have sat up there for four more years  
25 and not worried about things. But I felt compelled to do  
26 something with a system that had given me so much.

27  
28





1 I've lived with Workers Comp. now for 35 years. I  
2 thought I could offer something. So I resigned a position I was  
3 already confirmed in. I could have sat there and had it nice and  
4 easy. Instead, I came over and offered my services on this side  
5 when I was approached and said, "Please, give us a hand."

6 So I gave it up, and here I am. That's all I can tell  
7 you.

8 If you have any other questions, I'd be glad to answer  
9 them.

10 But I think the impression that you're getting, you'll  
11 get from this, I hope, is that this administration is not giving  
12 up on the system; not at all.

13 CHAIRMAN ROBERTI: Thank you very much, Mr. Sullivan.  
14 We appreciate your testimony.

15 SENATOR MELLO: Mr. Chairman, I apologize for asking a  
16 question this late in the day, but I have two fine points  
17 briefly.

18 You said these gentlemen who testified today do not  
19 represent anybody. I know that the judge said he's only here  
20 representing himself. I guess you included Mr. Wendell Phillips  
21 as well. My understanding is he does represent the California  
22 Council of Police and Sheriffs, which is a statewide  
23 organization, and PORAC -- is that PORAC?

24 MR. PHILLIPS: No, but PORAC was at the conference I  
25 discussed in January.

26 SENATOR MELLO: So he does represent a statewide group.

27 MR. SULLIVAN: Yes, I'm sorry. I overlooked --  
28



1           SENATOR MELLO: The second point is, Mr. Hatch was here  
2 day yesterday and spoke on your behalf very favorably. He  
3 indicated, as I recall his testimony, that he can pick up the  
4 phone and call you up if there's a file on behalf of one of his  
5 firefighters that he wants to be expedited. He can call you up,  
6 and he's always gotten a good response from you.

7           And Mr. Phillips has indicated just the opposite, a lack  
8 of response.

9           MR. SULLIVAN: Well, Mr. Phillips has never contacted  
10 me, nor has he even tried to sit down and talk to me about this  
11 problems.

12           SENATOR MELLO: You didn't let me ask you the question.  
13           The question is, are the firefighters getting favored  
14 treatment over the police and sheriffs?

15           MR. SULLIVAN: Oh, no, sir. Frankly, Mr. Hatch has only  
16 called me one time. He called me personally one time with this  
17 particular problem, I think he told you about, the cancer  
18 patient, the fellow with terminal cancer who was dying. And we  
19 took care of that matter for him immediately.

20           Mr. Hatch does not -- you know, I doubt if everybody  
21 were to call me, and certainly I'll give this kind of  
22 consideration to everybody. I don't care if it's anybody I know  
23 or not; it doesn't have to be. But if someone were to call, as  
24 they would in your office, I'm sure, and plead with you about  
25 this kind of a problem, you'd do what you could to solve it.

26           And we do that quite often, frankly. Mr. Hatch just  
27 happened to do it one time. But Mr. Hatch, apparently, feels  
28 comfortable that he could call me again, and I'm sure he could.



1 But he's not the only one who could. Mr. Phillips could  
2 call me, the same concern, and he would get the same result.

3 SENATOR MELLO: I guess that point I'm trying to get at,  
4 I just continue to be shocked at what's happened here as the  
5 evidence has indicated in the record.

6 I would hope we'd have a system where people should not  
7 have to call you.

8 MR. SULLIVAN: Oh, of course,

9 SENATOR MELLO: The system would work automatically for  
10 Mr. Hatch, Mr. Phillips, and for everyone else.

11 I'm thinking about the people in my district who are  
12 waiting, delays, and Salinas was a heck of a mess. I raised so  
13 damn much hell, they finally -- I wouldn't vote for anybody. And  
14 now, I think I've loosened up and vote for a few, but we're so  
15 far behind. Finally we got some more judges in there.

16 But the testimony here, I think, is overwhelming that  
17 you need more judges, and that counters your statement that you  
18 don't need more judges.

19 MR. SULLIVAN: We don't need more judges.

20 You have a particular problem with Salinas. You have --  
21 we put a new judge in there, and he's challenged on a regular  
22 basis. You have a problem with only three judges in there, when  
23 you've got one of them challenged, the other two bear the entire  
24 load. We have a real problem with that. And you know, it causes  
25 us a great deal of problem. We've had that happen to us in San  
26 Jose, and it's happened in a couple of other places.

27 SENATOR MELLO: Thank you.  
28





1 CHAIRMAN ROBERTI: Thank you, Senator.

2 With that, we'll adjourn the meeting, and we reconvene  
3 Monday at some point for vote only.

4 (Thereupon the hearing of the Rules  
5 Committee was recessed at approximately  
6 7:28 P.M.)

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PROCEEDINGS, AUGUST 29, 1988

1 CHAIRMAN ROBERTI: The meeting will come to order.

2 We have the nomination of Mr. John Sullivan,  
3 Administrative Director, Division of Industrial Accidents. This  
4 is for a vote only. We have heard testimony over three hearings.  
5

6 Unfortunately for the witnesses as well as Mr. Sullivan,  
7 the testimony was truncated. We apologize for that.

8 I have been myself trying to deliberate how I'm going to  
9 vote on this. It's very difficult.

10 I think Mr. Sullivan is an upstanding man who is,  
11 unfortunately, caught in the maelstrom of the Workers  
12 Compensation battles.

13 But I've mulled over this for a couple of nights, and  
14 I've really been teetering, myself, one way or the other. But I  
15 tend to feel that we have to try to do something to send a  
16 message to the administration on Workers Compensation. Miles of  
17 unopened mail; claims not being met, and the very damaging  
18 testimony of Mr. Rinaldi, which is not Mr. Sullivan's testimony.

19 But it is Mr. Rinaldi's testimony that they really want  
20 to bring the system to its knees in order to force us to reform  
21 that system. By not providing the system with money is just not  
22 keeping with the proper administration of a system that has  
23 nothing to do with employers, lawyers or unions. It has to do  
24 with people, individuals, who are the ones that are called upon  
25 to suffer because the administration purposefully wants to starve  
26 the system, whether money is provided or not, no matter what the  
27 law happens to say. That's exactly what Mr. Rinaldi's testimony  
28 was, regardless of the law.



1           So, I'm explaining my vote because I understand that I  
2 may be the swing vote. It may turn out that I'm not, and that's  
3 fine with me.

4           But as far as my own vote is concerned, I'm going to  
5 vote to deny confirmation. And I say that understanding that  
6 Mr. Sullivan is a well-qualified individual. But the entire  
7 administration of the system has become one which is intolerable.

8           I will welcome a motion and any comments on that motion.

9           Senator Ellis.

10          SENATOR ELLIS: Well, Mr. Chairman, this is the second  
11 nominee we've had for this position.

12          The opponents were the "judges", in quotation marks. I  
13 still don't know how they can regard themselves as judges, but  
14 they do.

15          You'll recall at the first meeting, one of the judges  
16 complained because he didn't have a clock, so that was  
17 significant. Another judge complained that they wanted robes;  
18 that's significant.

19          In this proceeding, we had judges come before us that  
20 were speaking of, not substantive matters or problems associated  
21 with whether or not the procedure was operating properly, but  
22 about the mail. If those judges are so concerned about the mail,  
23 why don't they go open the mail? Why don't they look at the  
24 mail? Why don't they do something? They sit back and do nothing  
25 but criticize; nothing but criticize.

26          If this man goes down, I would hope that the Governor  
27 would appoint one of these judges, one of these people sitting  
28





1 out here, that have been so critical, and give him six months to  
2 clear up the mail, six months, and then see what they do.

3 And ladies and gentlemen, of you who spoke against this  
4 man, I'll assure you, you couldn't do any better.

5 I'd move to confirm Mr. Sullivan.

6 CHAIRMAN ROBERTI: Senator Ellis moves confirmation.

7 SENATOR MELLO: Substitute motion.

8 CHAIRMAN ROBERTI: Substitute motion from Senator Mello.

9 SENATOR MELLO: I move the confirmation of Mr. Sullivan  
10 be held in the Rules Committee.

11 CHAIRMAN ROBERTI: Senator Mello moves that the  
12 confirmation be held.

13 On the substitute motion, and in response to Senator  
14 Ellis, I think his points are interesting. I didn't agree with  
15 all the testimony.

16 I certainly didn't agree with the testimony where there  
17 was an attempt to open up, for example, an Eagle Rock office,  
18 which I think, if you remember, is an attempt to distribute these  
19 offices where the people happen to live. I might say  
20 parenthetically, the Eagle Rock office just may end up being in  
21 my district because I represent half of Eagle Rock. But that's  
22 not the point.

23 The big issue is obeying the law. And Mr. Rinaldi's  
24 testimony that they were going to starve the system -- I'm  
25 paraphrasing -- regardless of what the law said is just an  
26 intolerable situation. He said it in testimony before an  
27 Assembly committee. It's written; it's recorded, and it is  
28



1 something that we have to challenge. We have a duty to  
2 challenge. That's the point.

3 I think what is symbolic of their refusal to follow the  
4 law are really the miles, and I don't say that with too much  
5 exaggeration, of unopened mail.

6 Now, one problem, as I'm saying, it's Mr. Sullivan  
7 caught up in the maelstrom of this terrible problem. But  
8 unfortunately, he is part of the administration of this system,  
9 and we have no other way of sending a message to the Governor or  
10 to Mr. Rinaldi.

11 Senator Craven.

12 SENATOR CRAVEN: As always, I pay attention to what you  
13 say, and generally I agree with what you say. I always find  
14 something to agree with.

15 However, the initial premise which you offered, to me,  
16 is somewhat like indicting the children for the sins of the  
17 father.

18 You talk about Rinaldi, who may be, you know, the worst  
19 thing that's ever happened to us. I'm not so sure, but obviously  
20 he isn't leading the league in popularity with a certain quarter  
21 with whom we must deal.

22 But Mr. Sullivan comes in and has to, you know, labor  
23 under this cloud which has been established by another entity,  
24 and at a prior time, and he does his best, I think, to work  
25 within the system as best he knows how.

26 And when he comes to that expression "as he knows how"  
27 or "best he knows how," I think he is probably as qualified as  
28



1 anyone, Mr. President, that you will find, because his background  
2 is in the field. He seemed to handle his comments very, very  
3 well. I think he probably would be the first to admit that he is  
4 not perfect, but I think secondly, he might say, "I'm willing to  
5 compare my record and my ability with any of those of my  
6 critics."

7 I really think that you do him an injustice if you  
8 indict him, to use the word I used before, because of something  
9 that he really didn't do.

10 CHAIRMAN ROBERTI: I appreciate the point you're making,  
11 and nobody's attempting to indict Mr. Sullivan. What we are  
12 trying to indict is the system of which he is a part. That is  
13 the problem.

14 My vote, just as my vote in an election, isn't to be  
15 taken as a vote of censure against the character of an individual  
16 I may vote against. I may disagree with the way he performs his  
17 duties; I may disagree with his political party, and maybe that's  
18 the problem right now.

19 It's not a question of a political party. It's a  
20 question of an administration of a system of which he is a part.  
21 He part of a system, and a very integral part of that system, the  
22 leaders of which do not want to enforce the law and say so. They  
23 want their way, and they want us to change the law before they  
24 enforce the law that's in front of them.

25 At least, that's the way that testimony read to me. And  
26 if I had to say anything was a clincher, that in my mind was it.

27 Senator Petris.  
28





1           SENATOR PETRIS: First, I think there was a lot of  
2 substantive testimony. The judges are the guts of the operation  
3 in addition to the clerical people, and they're the best judges,  
4 if you'll pardon the repetition of the name, of how the system is  
5 going.

6           I thought there was substantial testimony of an  
7 important nature.

8           I'm voting against the nominee because I, too, want to  
9 send a message, and I have reached the end of my rope on this  
10 outlaw mentality that comes out of the Governor's Office.

11           It's not this individual; it may not even be his boss.  
12 But there's an outlaw mentality down there. It prevails with  
13 OSHA. We have statutes on the books relating to the safety of  
14 the working people in this State, and he subverts that statute  
15 and kills the agency, without coming to the Legislature and  
16 saying, "This is a terrible law, let's get rid of it," or, "Let's  
17 change it."

18           He did it when he was Attorney General with the  
19 environmental group that was supposed to guard the coast in the  
20 Coastal Commission, adopted by the people of this State. He  
21 pulled the fangs of that because he didn't like what the people  
22 decided. He canned the lawyers that were in that agency.

23           He's done it with the farmworkers of the ALRB. He's  
24 pulled the fangs of proper enforcement of that law.

25           And by curious coincidence, except for the environmental  
26 one, most of these decisions affect the working men and women of  
27 this State. He has a very unhealthy contempt for the safety and  
28 well being of the working man in this State.



1 Now, if he'd come out publicly and say so, that would be  
2 fine. I would say all right; that's his viewpoint. Some people  
3 feel that way, and some people don't.

4 But when he's the lead officer of this State, who takes  
5 an oath to uphold the law, and he subverts the law time after  
6 time after time, and then defies us to do something about it,  
7 well, I think we ought to send him a message.

8 Now, Mr. Sullivan is a tool of that policy. It doesn't  
9 matter how good or bad he is. He's an instrument of that policy.  
10 And the only way we can show our displeasure of that policy is to  
11 vote no.

12 CHAIRMAN ROBERTI: I'm personally tired of the attitude  
13 -- and I guess I've said it over and over again. People may be  
14 tired of hearing me say it, but that's the way it is -- "It's my  
15 way or no way; my law or no law." That's what we've been  
16 operating under, and that's what appears in Workers Compensation.

17 This is our chance, large or small as it may be, to I  
18 guess send a message.

19 For what it's worth to Mr. Sullivan, it's a not a vote  
20 on his character or abilities, but it is with a part of the  
21 system of which you are a major operator that we have our  
22 problems.

23 Senator Mello's substitute motion is before us.  
24 Secretary will call the roll.

25 SECRETARY WEBB: Senator Ellis.

26 SENATOR ELLIS: No.

27 SECRETARY WEBB: Senator Mello.  
28



1 SENATOR MELLO: Aye.

2 SECRETARY WEBB: Senator Petris.

3 SENATOR PETRIS: Aye.

4 SECRETARY WEBB: Senator Craven.

5 SENATOR CRAVEN: No.

6 SECRETARY WEBB: Senator Roberti.

7 CHAIRMAN ROBERTI: Aye.

8 The vote's three to two on the substitute motion.

9 Now on the full motion as amended by the substitute,  
10 Secretary will call the roll.

11 SECRETARY WEBB: Senator Ellis.

12 SENATOR ELLIS: Aye.

13 SECRETARY WEBB: Senator Mello.

14 SENATOR MELLO: Aye.

15 CHAIRMAN ROBERTI: Wait, wait.

16 SENATOR ELLIS: That's right.

17 SENATOR CRAVEN: I move that Senator Mello be bound to  
18 his vote.

19 (Laughter.)

20 SENATOR MELLO: I think I will be bound, because as I  
21 understand the rules, Mr. Chairman, if I may, the main motion now  
22 has been amended by a three-two vote on the substitute motion.

23 CHAIRMAN ROBERTI: I think yes.

24 I should have explained it better, and it's my fault.

25 Cancel --

26 SENATOR ELLIS: Mr. President.

27 CHAIRMAN ROBERTI: Yes.  
28





1           SENATOR ELLIS: We're going back to what we did last  
2 week.

3           CHAIRMAN ROBERTI: That's right.

4           SENATOR ELLIS: Let's state it correctly and back up if  
5 we have to, but let's don't do what we did last week, where we  
6 took three votes to settle one question.

7           CHAIRMAN ROBERTI: I would be perfectly happy to only  
8 take one vote to settle the question. Counsel has said we have  
9 to take two, for reasons I have never quite figured out.

10          The main motion has been amended. It's really, I take  
11 it, a revote of Senator Mello's original motion to hold it in  
12 Committee.

13          SENATOR MELLO: Mr. Chairman, if I could try to restate  
14 the main motion as amended now.

15          It says that Mr. Sullivan's confirmation will be held in  
16 the Rules Committee.

17          An "aye" vote will be to hold it here; a "no" vote is  
18 not to hold it here.

19          CHAIRMAN ROBERTI: If we're stating it that way, and I  
20 should have restated the motion, we'll state it that way. That's  
21 not to say who was right or wrong in the earlier vote, but now  
22 the main motion is still before us.

23          An "aye" vote is to hold; a "no" vote is to vote against  
24 holding. And with that, we will vote one more time.

25          Senator Mello wants an "aye". Senator Ellis wants a  
26 "no".

27          SECRETARY WEBB: Senator Ellis.  
28



1 SENATOR ELLIS: No.

2 SECRETARY WEBB: Senator Mello.

3 SENATOR MELLO: Aye.

4 SECRETARY WEBB: Senator Petris.

5 SENATOR PETRIS: Aye.

6 SECRETARY WEBB: Senator Craven.

7 SENATOR CRAVEN: No.

8 SECRETARY WEBB: Senator Roberti.

9 CHAIRMAN ROBERTI: Aye.

10 The vote is three to two. Mr. Sullivan's confirmation  
11 is held in Committee.

12 We will now adjourn and go to the Floor. Thank you all  
13 for being attentive.

14 (Thereupon this hearing of the Senate  
15 Rules Committee was adjourned at  
16 approximately 10:55 P.M.)

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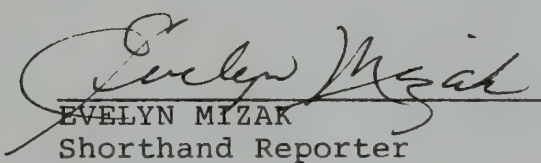
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I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

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15<sup>th</sup> day of September, 1988.

  
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26 Evelyn Mizak  
27 Shorthand Reporter  
28





APPEARANCESMEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR ROBERT BEVERLY

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

THOMAS W. HAYES, State Treasurer

SENATOR KEN MADDY  
Senate Minority Leader

SENATOR BARRY KEENE  
Senate Majority Leader

HONORABLE ART AGNOS, Mayor  
City of San Francisco

DR. HAYDN WILLIAMS, President  
The Asia Foundation

KIRK WEST, President  
California Chamber of Commerce

CLAUDE EVERHART, Chief Deputy Mayor  
City of San Francisco

HARRIET KIYAN, Assistant Chief of Administration  
Department of Fish and Game

B. T. COLLINS

RALPH MORRELL



APPEARANCES (Continued)

MARC BROWN

California Rural Legal Assistance Foundation

MAURA KEALEY

Service Employees International Union



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P R O C E E D I N G S

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CHAIRMAN ROBERTI: The Committee will come to order.

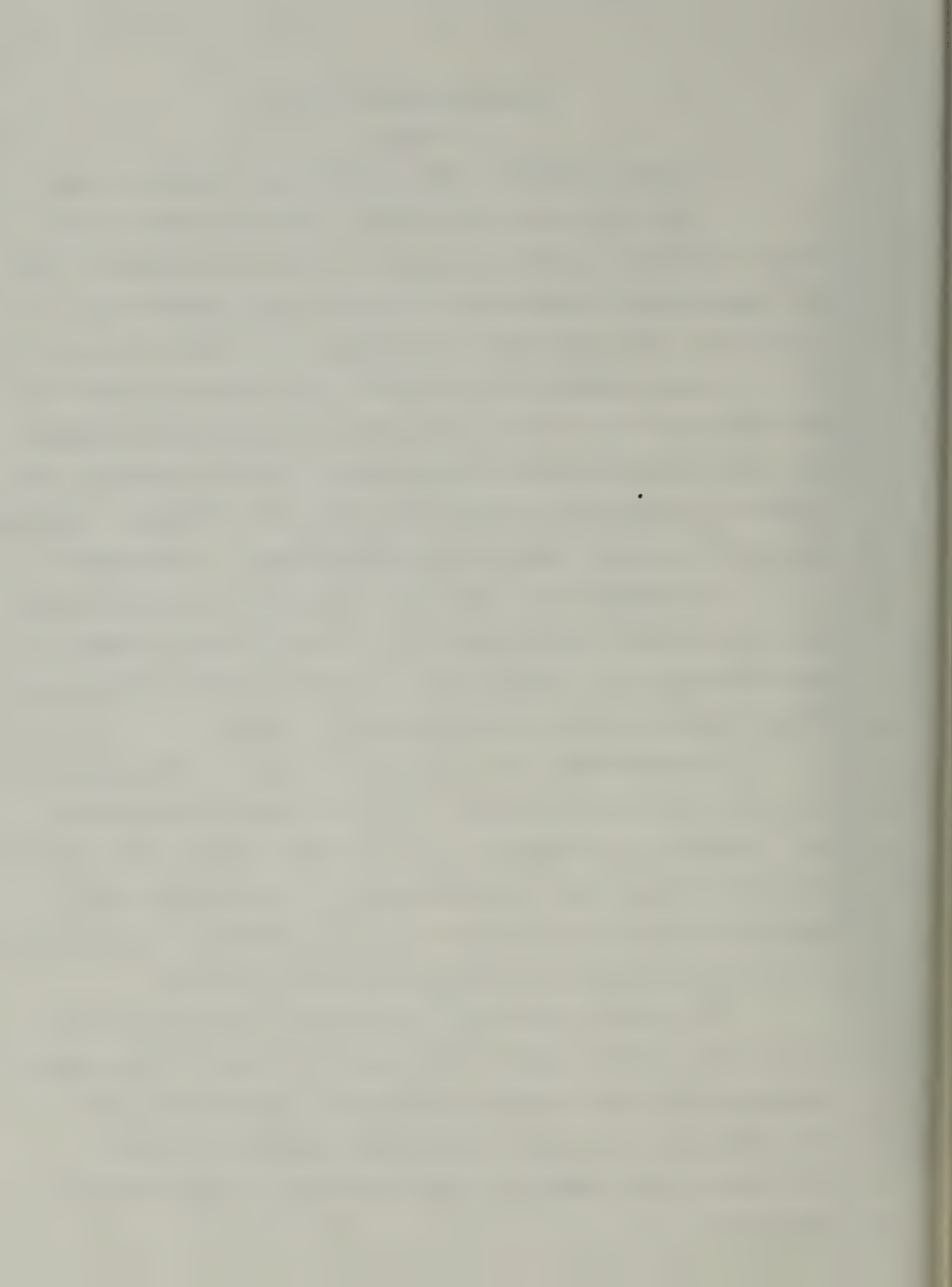
The first order of business is to say welcome to our newest member of the Rules Committee, Senator Bob Beverly. Not the newest Member of the State Senate by any stretch of the imagination, but we're very, very happy to have him join us.

Also joining us at the dais is the Majority Leader of the Democratic Party in the State Senate, Senator Barry Keene, who was invited, as the Minority Leader, Senator Ken Maddy, was invited to address the issue of Mr. Hayes' confirmation. Senator Maddy will join Mr. Hayes in the presentation, I understand.

The Senate Rules Committee is meeting this morning to hear the Governor's nomination to the Constitutional Office of State Treasurer, Mr. Thomas Hayes. We will have Mr. Hayes come forward with witnesses that he wishes to present.

SENATOR MADDY: Mr. President, Members of the Senate, I have some very brief comments, and then certainly the nominee, Mr. Tom Hayes, is extremely well qualified to answer all of your questions and give you the background that he believes and I believe, and I'm sure that you will after reviewing the evidence, that he's extremely well qualified for this position.

It's with a great deal of personal interest that I'm here because of the fact that for the last eight to nine years, I have served as Vice Chairman of the Joint Legislative Audit Committee, which brought me in contact almost weekly with Mr. Hayes in his capacity as Auditor General of the State of California.



1 I think in reviewing his resume, I don't need to  
2 highlight the background, experience and qualifications of  
3 Mr. Hayes for this job. I don't think we could look anywhere in  
4 the State of California and find a person more qualified in terms  
5 of his background, experience and his qualifications, primarily  
6 from his job as Auditor General.

7 From a personal note, I want to touch this morning on  
8 our relationship vis-a-vis the Auditor General's role and the  
9 Joint Audit Committee. That's a delicate position. All of us in  
10 the Legislature realize that the Auditor General conducts  
11 investigations at requests of Legislators, investigations that  
12 pertain to government operations in the State of California. In  
13 that role, there is an extremely high degree of integrity  
14 required, an ethical standard required, a discreteness, if you  
15 will, at times required, an ability to work with both Houses of  
16 the Legislature and with both parties and with all parties. And  
17 in every respect over the nine years, I've found Mr. Hayes to be  
18 exemplary in his actions and in his duties as Auditor General of  
19 the State of California. In all cases, I've found that he worked  
20 diligently to try to deal with sensitive issues in a manner that  
21 spoke well for the State of California and the people of the  
22 State of California, representing their interests, but at the  
23 same time, recognizing the implications of investigations into  
24 governmental activities.

25 I say those things because what I view that the public  
26 is looking for in a Constitutional position such as Treasurer are  
27 the questions of credibility, and integrity, and honesty, and  
28



1 ethical standards. Because, whether we like it or not, they're  
2 looking at it as their money that we're dealing with; it is their  
3 money. And those standards of conduct that are required by a  
4 Treasurer have to be extremely high.

5 In this case, I think Mr. Hayes is, again, as qualified  
6 as we could find anybody in the State of California.

7 The only part that I guess I've left out is the, quote,  
8 "political side" of the job. In the job of Treasurer, I believe  
9 that if the conduct of the State Treasurer in terms of his  
10 credibility, his integrity, his honesty, and his ethical  
11 standards is such that I've outlined, and what I believe  
12 Mr. Hayes will follow, based on my nine years or so of experience  
13 with him in dealing with him as Auditor General, that the  
14 political side will take care of itself. The public will  
15 recognize that this is the type of person that should be holding  
16 that office. And if there's a political side to it, vis-a-vis  
17 dealing with the Legislature, he's solved that problem because I  
18 think that's what we're looking for in a Constitutional Officer  
19 as representatives of government.

20 I have searched. I have seen nothing that would even  
21 raise a question in my mind in terms of the qualifications and  
22 abilities of Mr. Tom Hayes to be State Treasurer of the State of  
23 California.

24 So, I'm delighted to be here. I support his nomination  
25 strongly. I urge his confirmation by the State Senate Rules  
26 Committee and will strongly urge my colleagues on the Senate  
27 Floor to confirm him when his nomination arrives there.  
28







1 I think it's time now, Mr. President, that I'm going to  
2 leave, but I wanted to add these opening words to Mr. Hayes'  
3 meeting with you.

4 I'm sure that the Senate Rules Committee will be  
5 diligent; will press and ask the questions. I'm delighted my  
6 colleague and cohort over here, Mr. Keene, is here as Majority  
7 Leader. I'm going to leave any questions I may have had -- I've  
8 talked with Mr. Keene -- I've left those questions with him. I'm  
9 sure he will ask those questions.

10 CHAIRMAN ROBERTI: I'm sure he'll carry out your  
11 instructions accurately.

12 SENATOR MADDY: Yes, he will ask all the questions that  
13 I had.

14 SENATOR KEENE: I'm your spokesman on all occasions.

15 SENATOR MADDY: I would add a personal note.

16 Although I'm not a Marine, and I didn't wear my Marine  
17 badge today, as some of the Members do, one of the reasons we  
18 nominated Senator Beverly to be on the Rules Committee was the  
19 fact that he was an old Marine.

20 (Laughter.)

21 CHAIRMAN ROBERTI: And on this Committee, he needed to  
22 be.

23 SENATOR MADDY: I thank you very much.

24 CHAIRMAN ROBERTI: Thank you very much, Senator. We  
25 appreciate your presenting Mr. Hayes.

26 MR. HAYES: Thank you, Senator Maddy, for that opening  
27 statement.  
28



1           Thank you, Members of the Rules Committee, for giving me  
2 the opportunity to appear here today.

3           I'm here today to ask for your support in my  
4 confirmation as California's State Treasurer. I'd like to give a  
5 brief opening comment in which I address three issues: one, why  
6 I am interested in the position; second, my qualifications; and  
7 third, what my approach would be once in the position.

8           First, why I'm interested in the job. The decisions  
9 that we Californians are going to make over the next decade are,  
10 to a large degree, going to determine the quality of life that  
11 will be available in this State for the next century after that.  
12 I want to participate in those decisions. By the year 2010,  
13 there will be 29 million people in this State. We must be  
14 prepared for the economic growth necessary to be able to maintain  
15 and impact and improve the quality of life for each of our  
16 citizens.

17           Economically what's happened in the Pacific Rim offers  
18 us tremendous opportunities as a State, but also tremendous  
19 challenges. And we need to forge a public-private partnership in  
20 order to take advantage of those challenges.

21           What I see California needs to do is basically to invest  
22 in our future. Invest in infrastructure that will support the  
23 industry and quality of life that we've all come to know and  
24 love; to support educational programs that will train the  
25 workforce that will allow us to compete; to support industrial  
26 development that will provide jobs for our citizens; and to  
27 support quality of life such as housing and cleanup of asbestos  
28



1 that we need to support the life styles that I think the citizens  
2 deserve.

3 My personal qualifications fall into three categories:  
4 academic; my professional positions which I have held; and  
5 leadership. Academically, I hold a Master's Degree in Business  
6 Administration from San Jose State University, where I graduated  
7 first in my class.

8 On the employment side, after the Marine Corps and  
9 getting my M.B.A., I went to work for the United States General  
10 Accounting Office, where I evaluated the efficiency and  
11 effectiveness of a wide range of group government programs. And  
12 since 1979, I've been the Auditor General of the State of  
13 California.

14 I take pride in that service that I've had since 1979.  
15 We've had a lot of accomplishments in the Office of the Auditor  
16 General with what I consider to be the most qualified audit staff  
17 in the country. We've issued close to 600 reports in that  
18 period.

19 We've instituted a financial audit of the State of  
20 California which brought California financially in line with the  
21 biggest firms in the private sector. We should have done that 50  
22 years ago, but it wasn't done until 1982.

23 We've instituted an investigative division where we  
24 investigate individual acts of fraud, waste and abuse to help  
25 government run better.

26 And then during that period of time, we've received  
27 three national awards from the National Conference of State  
28





1 Legislators for excellence in financial reporting, and we've  
2 successfully completed two peer reviews -- audits from other  
3 audit organizations that have come through; eight States were  
4 represented on the last one -- to look at everything that we did  
5 to make sure that it was objective, met nationally accepted  
6 standards, and could be relied upon. And we've passed both of  
7 those with flying colors.

8         The last area is one of leadership. In the last ten  
9 years, I've served as: President of the National State Auditors  
10 Association; President of the National Association of State  
11 Auditors, Controllers and Treasurers; the State Chairman for the  
12 United Way Campaign; the fundraising Vice President for the  
13 American Cancer Society; the Board of Directors of the Stanford  
14 Children's Home. And I've received awards, a national award in  
15 financial management from the Joint Financial Management and  
16 Improvement Project, and from the School of Business at San Jose  
17 State University.

18         If I am confirmed, and I hope I will be, my approach to  
19 the Treasurer's Office will be the same approach I've used in the  
20 Auditor General's Office, which is primarily one of good  
21 government. I'll be the best banker I can. I'll install a  
22 competitive process where every firm has a chance at getting the  
23 business. I plan to achieve the goal of 15 percent minority and  
24 5 percent women participation. And most importantly, probably, I  
25 plan to maintain a close working relationship with the Governor  
26 and the Legislature because I don't think that an adversarial  
27 relationship between the Treasurer and the Governor or the  
28 Legislature is productive for the citizens of California.



1 I've brought several witnesses here today, and I'd like  
2 now to bring them up to speak on my behalf, or I'd be glad to  
3 answer any questions at this time you might have.

4 CHAIRMAN ROBERTI: First I'll ask, are there any  
5 questions? Senator Keene.

6 SENATOR KEENE: Mr. Chairman, I just had one question of  
7 the candidate. It's mainly for the purpose of attempting to  
8 figure out where he stands on an issue that I believe is of  
9 concern so that, legislatively, we might work with the candidate  
10 should he be approved by the Senate.

11 That concerns the use of competitive bids versus  
12 negotiated arrangements on bond underwriting. I'm wondering what  
13 your thoughts are generally, and how you would feel about a  
14 legislative requirement requiring competitive bidding except in  
15 exceptional situations, and I'm not sure what those situations  
16 are; I have some thoughts on the matter, but I'd really like to  
17 hear your thoughts.

18 MR. HAYES: First of all, Senator, as I said in my  
19 opening comments, I support a competitive process. That can be  
20 one of two ways. You can have a competitive bid, which is  
21 frequently used on general obligation bonds, but sometimes it  
22 doesn't work on some of the other bond issues.

23 I do support a competitive process, and I think probably  
24 the better way to go is with a series of RFPs, either  
25 periodically or on the larger issues, because you don't want to  
26 get burdened down with doing RFPs when they're not needed.

27  
28



1 But the bottom line is, what you would like to get to is  
2 the competitive process. I support that. I intend to use the  
3 competitive process in awarding the underwriting contracts.

4 But the competitive bid doesn't always work. It depends  
5 a lot on the size and the complexity of the issue. So, I can't  
6 support a competitive bid in every case.

7 SENATOR KEENE: In what kinds of cases do you foresee a  
8 departure from competitive bidding?

9 MR. HAYES: For example, if we were trying to get  
10 competitive bids on issues larger than \$100-200 million, you  
11 might only get one bid. And the State might, in essence, pay  
12 more than they would have if they had tried to negotiate those  
13 large issues.

14 Also, in a volatile market, when you're going with a  
15 competitive bid, you're basically going out on one day, and you  
16 may not get the best deal for the State. You might not get as  
17 good a deal as you could if you were to negotiate, where you have  
18 more flexibility.

19 So, I share your concerns about a competitive process,  
20 but again, it doesn't always work.

21 SENATOR KEENE: The bottom issue, the bottom line issue,  
22 it seems to me, is who gets to decide? Does the Treasurer get to  
23 decide that in a specific situation competitive bidding won't  
24 work, and therefore negotiation is more desirable? And how do we  
25 assure in those circumstances that the judgment being exercised  
26 is in the best interests of the people versus a situation where  
27 there are legislative guidelines set forth that say you must go  
28







1 to competitive bid except in, perhaps, A., where the market is  
2 excessively volatile, and B., whatever else, like the large  
3 situations that you mentioned?

4 MR. HAYES: The insurance you have is that it's a matter  
5 of public record who gets the business and who does not, and what  
6 the underlying circumstances are around that.

7 I would like to retain some flexibility in the  
8 Treasurer's Office in regard to making those decisions. However,  
9 the bulk of the decisions are made through boards and  
10 authorities. And the Treasurer's Office issues primarily G.O.  
11 bonds. The boards and authorities that the Treasurer controls  
12 make the decisions on other issues, and there are more people  
13 involved than just the Treasurer on those issues.

14 SENATOR KEENE: Well, I was hopeful that you would be  
15 able to give me a more specific answer.

16 Is the specific answer, perhaps, that you think the fish  
17 bowl effect is enough? That the public knowledge of who gets  
18 what bids is sufficient, and that full discretion ought to be  
19 with the Treasurer? Or, that you would be interested in helping  
20 to shape some specific legislation with some specific guidelines  
21 that would control the parameters of the discussion?

22 MR. HAYES: I will commit to you that I will work with  
23 you to see if we can come up with some workable legislation, but  
24 I can't commit that I would do anything that would tie the  
25 Treasurer's hands to the point that would limit our getting the  
26 best deal for the people of California. And I think you and I  
27 both agree that that's what we're looking for.  
28



1           SENATOR KEENE: So, the ultimate answer is "trust me"?

2           MR. HAYES: Trust me, with the public scrutiny that will  
3 automatically come.

4           Again, as I said, a competitive process is one that I  
5 support. But a competitive bid process isn't always the best  
6 competitive process.

7           SENATOR KEENE: But you don't think that we can define  
8 those situations in which it is not the best process?

9           MR. HAYES: I think it would be very difficult to define  
10 it in specific terms because: you're dealing with volatility of  
11 markets; you're dealing with size of issues; complexity of  
12 issues; whether the issues have been -- if it's a first-time  
13 issue, or it's something that's become fairly mundane, such as  
14 the Veterans Bond Home Program. All of these variables -- as you  
15 can appreciate, there are many variables -- all come to play on  
16 any time that we go out to borrow money as a State.

17           I just don't know how we could write down a standard  
18 checklist and decide here's where we go on this one, and here's  
19 where we go on this one. One's competitive and one's not  
20 competitive, and it's just -- it's a situation similar to what  
21 you face when you're looking at legislation. It would be very  
22 difficult for us to come up with a list of criteria for you to  
23 say, "Hey, if we meet these criteria, I'll vote yes on a bill; if  
24 we meet these criteria, I'll vote no on a bill."

25           You have to leave some room for reasonable judgment, and  
26 you have to allow for public disclosure, as your votes would be.  
27 And if I'm confirmed as Treasurer, there'll be public disclosure  
28 over what my decisions are.



1           SENATOR KEENE: I appreciate the forthrightness of your  
2 answer and your sticking to your position.

3           I may attempt to introduce a piece of legislation that  
4 will meet the requirements that you indicate probably cannot be  
5 met without defeating public policy and allowing sufficient  
6 discretion to the Treasurer. I may give it a try.

7           I just want to put you on notice about that.

8           MR. HAYES: And I'd be willing to try to work with you  
9 on that to come up with some that's acceptable.

10          SENATOR KEENE: Thank you.

11          Thank you very much, Mr. Chairman.

12          CHAIRMAN ROBERTI: Thank you, Senator.

13          Mr. Hayes, do you have other witnesses?

14          MR. HAYES: I believe that you have the list.

15          CHAIRMAN ROBERTI: Yes, the first witness will be Mayor  
16 Art Agnos.

17          MAYOR AGNOS: Good morning, Mr. Chairman and Members of  
18 the Committee.

19          It's a delight to return to a place that is a very  
20 important part of my life, a very valued part of my life. It's a  
21 delight to be before this Rules Committee and not be asking for a  
22 rule waiver with Mr. Rollens sitting over there, giving me the  
23 evil eye that I used to recall so well.

24          But I'm delighted and honored to be here today to  
25 support the confirmation of Tom Hayes to be the Treasurer of the  
26 State of California. I know Tom Hayes to be of the highest  
27 professional ethics and commitment to public service. I regard  
28







1 his nomination as an outstanding and excellent choice by Governor  
2 Deukmejian.

3 I began working with Tom Hayes on a day-to-day basis  
4 when I was appointed to be the Chair of the Joint Legislative  
5 Audit Committee in 1982, a post that I held until I took up my  
6 current post in San Francisco this past January.

7 During those years, Tom Hayes' record of outstanding  
8 performance is the best possible witness to offer you today. In  
9 1983, he performed the first statewide audit of all State  
10 government functions of any State in the United States. Not only  
11 was this the first statewide audit to be completed in conformance  
12 with new federal rules, its professionalism set a standard that  
13 was then used by the other 49 States of the nation.

14 He also managed the modernization of our legislative  
15 audit function, leading to making California the first large  
16 public institution computerized in every area of audit functions,  
17 including field visits. This predated even the United States  
18 Internal Revenue Service's steps in that same direction.

19 The Joint Legislative Audit Committee determined that  
20 the people of California would best be served by audits that were  
21 independent of partisan influence, directed exclusively to the  
22 goal of accurate monitoring and fact finding. Tom Hayes  
23 epitomizes that. He encouraged and helped develop that crucial  
24 independence.

25 Perhaps the best testament to the standard of  
26 professionalism above partisanship came in the hard-fought 1986  
27 Governor's race, which I remember so well as the Chair.  
28



1 Questions were raised about our State Toxics Program in the midst  
2 of that campaign. Governor Deukmejian, in a virtually  
3 unprecedented decision, requested that the Legislature have the  
4 Auditor General, Tom Hayes, conduct an independent audit to  
5 determine whether the Toxics Program was meeting its goals.

6 Tom Hayes has confronted tough problems fairly. The  
7 audit function's very success at being independent has resulted  
8 in some of the very toughest decisions and issues being brought  
9 to it. Those have included in the past that I recall: an audit  
10 on the State Pesticide Program; an audit on the State Bar  
11 Association fees; an audit on the Agricultural Labor Relations  
12 Board; audits performed for local jurisdictions, including  
13 Oakland public schools and the Peralta Community College  
14 District.

15 As Mayor of San Francisco, I now have the opportunity to  
16 see the results of some of those local audits from the vantage  
17 point of being Mayor. I believe that the work that Tom Hayes did  
18 and his audit staff performed on the Hastings College of the  
19 Law's use of student scholarship funds to develop real estate  
20 could not have been matched with the resources at the local level  
21 at that time. The same can be said of an audit performed on the  
22 Port of San Francisco and its debt structure, along with its  
23 contemplated use of surplus funds.

24 Tom Hayes' sense of professionalism and commitment to  
25 the best values of public service also account, in my opinion,  
26 for making the Auditor General's affirmative action program the  
27 strongest of any State agency.  
28



1 Quite simply, he's fair under pressure. He supports  
2 excellence. He rewards it in his own staff. He is thorough in  
3 his professionalism and in his efforts.

4 In short, Mr. Chairman and Members, this is one of those  
5 rare moments in politics when we are presented with a nomination  
6 based on merit alone. And I'm pleased to respectfully recommend  
7 to this Committee a vote in favor of Tom Hayes to be the  
8 Treasurer of the State of California.

9 Thank you very much.

10 CHAIRMAN ROBERTI: Thank you, Mr. Mayor. Your testimony  
11 is precise, to the point, and very valued.

12 Senator Petris.

13 SENATOR PETRIS: I'm very delighted to see our  
14 distinguished Mayor from San Francisco, who served as Chairman of  
15 that Audit Committee for years.

16 I, along with the rest of us, have been very impressed  
17 with Mr. Hayes while he worked for us all those years. Some of  
18 those audits he did were at my request.

19 I agree 100 percent with the statements you've made  
20 about his professionalism and high degree of ethics and  
21 integrity, and so forth.

22 There is a new arena that he's moving into now. The  
23 Treasurer's Office at one time was regarded as a technician's  
24 job. And I don't think there's any problem or doubt about his  
25 competence and track record on that side of the Treasurer's  
26 duties.





1 But there are other areas. The Treasurer serves as  
2 chairman of some of the committees that he's on, and there's a  
3 lot more latitude now being given in the law. So, the Treasurer,  
4 as chairman of some of these committees and as a member, has a  
5 lot to say about the allocation of money.

6 The question I put to you, and of course at the same  
7 time to him, and he'll respond to it later: if he's in a  
8 situation where, given a certain amount of money in bonds which  
9 needs to be allocated among a lot of competing forces, and let's  
10 say there's tremendous pressure from one segment in our  
11 government leadership saying, "No, we can't or shouldn't spend  
12 any of this money for low-income housing. We ought to wait,  
13 because we have too many other problems; the economy is tight,"  
14 whatever the reason.

15 Or, within that subject matter of housing, there's  
16 discretion whether to go for moderate or middle-income. Some of  
17 the programs help people that are pretty far above what we  
18 traditionally call low-income housing. It's urban housing versus  
19 rural, and things of that sort.

20 How do you feel he would make the decision where the  
21 pressures are between competing forces of that kind? There's a  
22 conservative element saying, "Hey, we're not going to spend any  
23 more money on this; we've spent too much. Let's get rid of this  
24 welfare state."

25 And yet, the bonds have been allocated, and they're  
26 there. And he has the discretion to go with the whole thing or  
27 go with a small part of it.



1           Setting apart the technical competence of this, what  
2 does his heart say, and what does his mind say about the  
3 allocation of money in those directions?

4           MAYOR AGNOS: I have a great deal of confidence,  
5 Senator, that he will do the right thing for the people that we  
6 care about. He will not respond to the kinds of pressures that  
7 inevitably are a part of politics in those kinds of circumstances  
8 to the detriment of the people.

9           How do I know? I've seen him do it. Nowhere are the  
10 pressures any more pronounced than here in the Legislature, with  
11 competing interests always coming to this place to seek their  
12 way. And since he has been the Auditor General, prior to my  
13 administration as well as afterwards, he was subject to those  
14 kinds of influences among the Members here, the 120 Members of  
15 the Legislature. I know of circumstances where Tom was prepared  
16 to put his job on the line rather than do the wrong thing because  
17 of the political pressures that were put on him.

18           I believe that kind of character trait will reveal  
19 itself even stronger as Treasurer of this State.

20           SENATOR PETRIS: That's what I wanted to find out.

21           I happen to know about some of them myself. I wanted to  
22 get that on the record.

23           You have confidence based on your on personal  
24 experience.

25           MAYOR AGNOS: That's right, absolutely.

26           SENATOR PETRIS: Thank you.

27           CHAIRMAN ROBERTI: Any other questions?  
28



1 Thank you, Art.

2 MAYOR AGNOS: Thank you, Mr. Chairman.

3 CHAIRMAN ROBERTI: The next witness is Dr. Haydn  
4 Williams, President of the Asia Foundation.

5 DR. WILLIAMS: Mr. Chairman, Members of the Senate Rules  
6 Committee, my name is Haydn Williams, and I am President of the  
7 Asia Foundation. I am here today to recommend the confirmation  
8 of Mr. Thomas W. Hayes to the Office of Treasurer of the State of  
9 California.

10 The Asia Foundation is a publicly supported California  
11 organization which covers more of Asia and the Pacific, and which  
12 makes more grants to more Asian institutions, than any other  
13 private American organization. Its broad purposes are  
14 three-fold: one, to help Asians strengthen their own societies  
15 consistent with their own needs, aspirations and values; two, to  
16 encourage regional cooperation and exchange; and three, to  
17 further Asian-American mutual understanding and respect.

18 Over the past few years, Mr. Hayes, on a voluntary  
19 basis, has made a significant contribution to the Foundation's  
20 pursuit of these objectives. His personal interest, commitment,  
21 professional competence and vision, along with an ability to  
22 organize and to get things done quietly and without fanfare, has  
23 contributed to the success of important Foundation projects. In  
24 so doing, Mr. Hayes has strengthened California's involvement and  
25 leadership role in the Pacific and in Asia.

26 I cite the Philippines as an example. In discussing the  
27 needs of that country in its efforts to restore democracy,  
28





1 Mr. Hayes made comment to me that a major task facing the  
2 Philippines was to rebuild the confidence of the people in the  
3 fiscal integrity of its government; that this was basic to any  
4 true democracy.

5 From this strong personal belief has emerged one of the  
6 Foundation's most successful programs, one which has already had  
7 an impact on public finance policies, procedures, and management  
8 in the Philippines. And without Mr. Hayes' inspiration and  
9 leadership, the project would not have gotten off the ground.

10 In brief, in consultation with Mr. Hayes, agreement was  
11 reached to bring a total of 90 mid-level financial managers from  
12 various units of the Philippine government, including the  
13 Commission on the Audit, to Sacramento for intensive orientations  
14 and actual work experiences with various offices of the  
15 California State government concerned with fiscal matters.

16 From the beginning, Tom Hayes took the lead in the  
17 program design in interviewing candidates and in arranging their  
18 placement in Sacramento. On his own time, he and his wife, Mary,  
19 have given personal attention to those selected for this public  
20 finance fellows program, including home hospitality and  
21 presentations to each one, a framed certificate at the end of the  
22 course at Tom's own personal expense.

23 To date, 60 Philippine public finance fellows have been  
24 graduated from this program. Benefits are already apparent. New  
25 professional and personal relations have been established between  
26 California State agencies and their counterparts in the  
27 Philippines.

28



Even more importantly, reports from the Philippines indicate that the returnees have already had an impact on raising the standards of public finance and accountability in the Republic of the Philippines. In recognition of this, Mrs. Aquino and cabinet level officials have expressed their personal appreciation to the Auditor General of the State of California for his major contribution to the restoration of good government in the Philippines.

Mr. Hayes has also played an important similar role in implementing an exchange program with the Auditor General of Thailand and with those concerned with the Republic of China's management of its fiscal affairs.

There is no question. On his own initiative, Tom Hayes has been responsible for strengthening our country's and the State of California's ties with important Asian institutions and contemporary leaders. And all of this has been done on a pro bono basis with no expense to the State of California. His trips to Asia for a first-hand look at needs to be filled have been paid for by the Asia Foundation. Looking for ways to help others in his profession in Asia is how Tom Hayes has used some of his own vacation time.

And I might add, he's had to fly economy class, since this is the Foundation's policy.

(Laughter.)

CHAIRMAN ROBERTI: Mr. Morrell is noting all these points very carefully.



1 DR. WILLIAMS: I consider it a great personal honor to  
2 be able to testify today on Tom Hayes' behalf, and to recommend  
3 without reservation his confirmation.

4 He is a patriot, a man of high ideals and vision, a man  
5 of character and unquestioned integrity. A quiet, firm,  
6 efficient executive and doer; a true and dedicated public  
7 servant.

8 Thank you, Mr. Chairman.

9 CHAIRMAN ROBERTI: Thank you very much, Dr. Williams.  
10 Senator Petris.

11 SENATOR PETRIS: I think you'll find that he's going to  
12 continue flying economy, because that's the State policy also.

13 (Laughter.)

14 DR. WILLIAMS: Thank you.

15 CHAIRMAN ROBERTI: Mr. Kirk West, President of the  
16 California Chamber of Commerce.

17 MR. WEST: Thank you, Mr. President, Members of the  
18 Rules Committee.

19 I've had the privilege, over about 20 years, of working  
20 with the State Treasurer's Office, going back to the days of Ivy  
21 Baker Priest, to Jesse Unruh. I've got very great respect for  
22 these people and for the high professionalism of this office.

23 The State Treasurer, as you know, serves as the banker  
24 for the State government, handling and working closely with the  
25 Controller, the Department of Finance, and handling the State's  
26 financial assets, and marketing the State's bonds, which are in  
27 the billions. The Treasurer also serves on a great number of  
28





1 boards and commissions, including the Pooled Money Board, the  
2 Commission on State Finance, Housing and Finance Agency, all of  
3 the bond committees, and our very significant retirement systems'  
4 boards.

5 This person should be able to advise the Legislature as  
6 to the appropriate level of authorized indebtedness in order to  
7 preserve our excellent credit rating. And this must be watched  
8 very closely due to the major expansion of debt in recent years,  
9 which we've supported, but it's nevertheless grown significantly  
10 in the last few years.

11 The Treasurer must be able to represent the State in the  
12 financial community to assure investors of our sound financial  
13 condition and financial policies. The Treasurer should be able  
14 to understand State government; deal with a great number of State  
15 agencies. The Treasurer should be a good administrator, able to  
16 serve effectively on all these boards and commissions, and  
17 exercise sportsmanship and oversight as well as being able to  
18 give good policy direction, conserve his time, and run his own  
19 office as well.

20 This is a person that should be a person of strong  
21 intellectual capacity, sound judgment and absolute integrity.

22 Tom Hayes is very well qualified on all counts,  
23 personally and professionally, for this appointment. I know from  
24 my days in the California bureaucracy, when Tom's office audited  
25 a number of departments in my agency of Business and  
26 Transportation, that Tom is not a grandstander. He is not a  
27 publicity seeker. The audits were tough but very fair in that  
28 capacity.



1 Tom has been a very good fiscal watchdog for the State  
2 of California. I believe Tom Hayes has served you, the  
3 Legislature, very well as one of your top officials, and if  
4 confirmed as Treasurer of the State of California, he would serve  
5 the public very well indeed.

6 I urge his confirmation.

7 CHAIRMAN ROBERTI: Thank you very much, Mr. West.

8 Any questions of Mr. West? Thank you.

9 Ms. Harriet Kiyan, Assistant Chief Administrator of the  
10 Department of Fish and Game.

11 MS. KIYAN: Mr. President, Members of the Senate, my  
12 name is Harriet Kiyan, and I'm pleased to be here to support Tom  
13 Hayes' nomination as State Treasurer.

14 I worked as an auditor for Tom in the office of the  
15 Auditor General for six years, from 1979 to 1985. And now, I  
16 work as the Assistant Chief of Administration for the Department  
17 of Fish and Game. I hope my observations as one of Tom's former  
18 employees will be helpful.

19 I truly enjoyed working for Tom at the office of the  
20 Auditor General. One of the many reasons is Tom's natural  
21 leadership ability. Tom has the ability to envision a direction  
22 he wants an organization to take, to clearly communicate that  
23 vision to his staff, and to establish an environment where the  
24 vision can become a reality.

25 This ability was most evident to me as it related to a  
26 vision of the role of the office: his vision of a creative and  
27 dynamic work environment, and his vision of a professional  
28 product.



1           When I first joined the office, it primarily conducted  
2 performance audits. Tom became Auditor General shortly after I  
3 arrived, and he believed that an effective audit organization  
4 should also have the capability to perform financial and  
5 investigative audits.

6           When I left, it had three divisions working together in  
7 harmony to issue performance audits and reports of State  
8 programs, to issue an annual comprehensive financial audit report  
9 on the financial condition, and to issue reports on improper  
10 activities occurring in State government.

11           To have a creative and dynamic organization, Tom  
12 believed he would need to employ competent individuals with  
13 various cultural backgrounds and with training in many  
14 disciplines. The recruitment of qualified competent staff was  
15 not a simple task. Tom established an outreach program to  
16 encourage minority recruitment, and also initiated a  
17 comprehensive interview process, which included a writing test  
18 and several interviews with various levels of staff.

19           Tom also believed in not only hiring competent,  
20 qualified staff, but also in promoting the professional growth of  
21 his employees. To assist in developing his employees  
22 professionally, one of the things the office did was to establish  
23 the CPA internal review committee to help employees get licensed  
24 as CPAs. I and many others have become licensed through the  
25 experience with the office.

26           I understand that also Tom established a policy to  
27 encourage clerical staff to take accounting-related courses to  
28 assist them in crossing over into the professional field.







1 In addition, Tom was adamant that audit reports be as  
2 logically sound, objective, and accurate as possible. To  
3 accomplish these objectives, Tom implemented a system where  
4 senior employees who were not directly responsible for a  
5 particular report critiqued the audit's approach and ensured the  
6 accuracy of the facts, and then also critiqued wording of the  
7 report draft. What this quality control system did was to ensure  
8 that each report resulted in a professional product that all  
9 staff were very proud of.

10 Although Tom would be faced with a new environment and  
11 new challenges as State Treasurer, I believe his ability to  
12 envision a direction for an organization to take, clearly  
13 communicate that vision to his staff, and to establish an  
14 environment where the vision can become a reality, would allow  
15 Tom to successfully lead many types of organizations.

16 I believe that the State of California deserves a man  
17 such as Tom Hayes, who will bring that inspiring leadership  
18 quality to the Office of the State Treasurer.

19 CHAIRMAN ROBERTI: Thank you very much, Ms. Kiyan.

20 Are there any questions?

21 We appreciate your testimony.

22 That completes the list of witnesses, or have I missed  
23 someone? Mr. Collins, please come forward. I have you on my  
24 list, in fact: B. T. Collins.

25 MR. HAYES: Mr. Chairman, we should also have Claude  
26 Everhart on there.



1 CHAIRMAN ROBERTI: Excuse me, yes, Mr. Claude Everhart.  
2 Mr. Everhart, why don't you come up first, and then Mr. Collins.

3 MR. HAYES: I guess I lost one, Mr. Chairman.

4 (Laughter.)

5 MR. HAYES: He deferred to his boss.

6 CHAIRMAN ROBERTI: Mr. Everhart is the Deputy Mayor of  
7 San Francisco, in case someone feels that he's really changed his  
8 mind. His boss took care of his testimony from the Bay Area.

9 MR. EVERHART: I thought we took care of it.

10 MR. HAYES: No problem.

11 CHAIRMAN ROBERTI: Mr. Everhart, I trust you're in  
12 support of the confirmation.

13 MR. EVERHART: Yes, sir.

14 CHAIRMAN ROBERTI: Thank you.

15 Mr. Collins.

16 MR. COLLINS: Mr. Chairman and Members, my name is B. T.  
17 Collins. I am Vice President of Public Finance at Kidder  
18 Peabody. I'm not here representing Kidder Peabody, an investment  
19 banker, but rather I'm testifying personally in support of Mr.  
20 Hayes' nomination.

21 I believe I am the only one whose testimony was not  
22 written by Mr. Hayes.

23 (Laughter.)

24 MR. COLLINS: As you all know, we have been inundated,  
25 quite rightly so, with the 25th anniversary of John F. Kennedy's  
26 murder and all of his attendant statements. The two things that  
27 John F. Kennedy used to talk about, of course, were service to  
28



country, and the fact that leadership had passed -- the torch of leadership had been passed to a new generation.

Here before you, I think you have somebody who's exemplary of both of those characteristics.

I first met Mr. Hayes when he wrote an extremely biased and unfair report of the California Conservation Corps, a fact for which he has yet to repent. So, I of course, in standing on the side of truth and light, testified as to the veracity of what I felt was the right things about the CCC in responding to his audit in February of 1979, and I got my clock cleaned.

But about two days later, I got a phone call from Mr. Hayes. And he was rather agitated; I could tell by the tone of his voice. He was not upset by the attacks that I made on him. He was upset that I had assailed the integrity and professionalism of his auditors. In other words, he was worried about his troops.

That first impression has always stuck with me throughout our friendship, which has now lasted since that time.

Recently, I offered to testify in his behalf, and the first question, again, out of his mouth was not concern for himself -- because I was worried that my testimony might hurt him -- it was, he said, "Will this hurt you with the present Treasurer? How does this help you? This is not a good thing for you to do." And I said, "Don't worry about it. It's about time I stood on the side of the angels for a change anyway."

Everybody knows, it's no secret, that my former boss's sister is fully intent upon running for the Treasurer's position





1 on the Democratic side in 1990. I wrote a letter to Governor Pat  
2 Brown and said that you know the first rule of politics is that  
3 you must stick with your friends. There's nobody I have a higher  
4 respect for and a greater friendship for than Tom Hayes.

5 My partner in Los Angeles, who has spent many years in  
6 the City of Los Angeles government, said, seeing my remarks in  
7 the Los Angeles Times, "What is your friend doing? He has taken  
8 a \$20,000 a year pay cut. He has the most secure job in the  
9 Legislature. He's got two teenage daughters ready to go to  
10 college. What in God's name, he's opening his whole family up to  
11 all these attacks and everything else like that," on the heels of  
12 the Lungren charade.

13 So, I didn't know. And I said, "Tom, why are you doing  
14 this?" And I repeated the question verbatim that my partner in  
15 L.A. had said.

16 And in his usual dull way, he simply replied that if he  
17 didn't do it, who was going to step up to the plate? And he  
18 makes the idea of public service honorable, and I think you, all  
19 of you who've been in public service for so long, can understand  
20 that.

21 As you know, Mr. Hayes is a former Marine officer,  
22 unable to meet the qualifications of being an Army officer.

23 (Laughter.)

24 MR. COLLINS: But one thing about the Marines, they of  
25 course are always volunteers. So Mr. Hayes stepped up to the  
26 plate when his country asked him to.



And on December 10th, we, the people of the State of California, are going to honor all the Californians who gave up their lives in that conflict, some of whom might have served on or about where Mr. Hayes was.

So, I think he's living up to John F. Kennedy's tenet about doing something for your country, but also, when you figure there are only two legislative Members in this State who have Vietnam experience, that perhaps it is an appropriate choice by the Governor to appoint somebody who is of the new generation, who is of the Vietnam generation.

It doesn't mean that that makes him the great Treasurer. I think his character and competence speak for themselves. There's probably nobody -- and people on Wall Street will agree to this -- who's more qualified in this century to be the Treasurer of the State of California, which is the third most powerful fiscal post, after the Chairman of the Federal Reserve and the Secretary of the Treasury, in the State.

I guess my last argument is, if he was good enough for the Legislature for ten years, he ought to be good enough for the Governor to appoint.

I think that the Democrats ought to be ecstatic at this appointment, because they will never have another chance at challenging a candidate who is as apolitical, or who is as dull as oatmeal, as Tom Hayes.

(Laughter.)

MR. COLLINS: Thank you.



CHAIRMAN ROBERTI: I can see why Mr. Hayes didn't write your speech.

(Laughter.)

CHAIRMAN ROBERTI: Any time you have B. T. testify in your favor, you take your chances.

(Laughter.)

CHAIRMAN ROBERTI: I want you to know that Mr. Collins wrote me a nice letter in support of Mr. Lungren as well.

(Laughter.)

CHAIRMAN ROBERTI: Maybe this time, however, we'll listen to him.

Thank you.

Any questions of Mr. Collins? Thank you, B. T.

Now that, I think, is the conclusion of the affirmative witnesses.

Thank you very much. You may stay there.

Frankly, I have received no letters or requests of people in opposition. However, I do have a few witnesses who wish to testify on the appointment itself. So, I'll call them in the order in which I have their names listed.

Mr. Marc Brown, California Rural Legal Assistance.

MR. BROWN: Mr. Chairman and Members, I'm Marc Brown, with the California Rural Legal Assistance Foundation, and I'm here today to testify because of the important role that the State Treasurer plays in the area of housing.

The Treasurer serves as the chair or member of a number of important State housing bond and agencies and commissions,





1 among those as Chair of the Debt Limit Advisory Allocation  
2 Committee, which in 1987, allocated \$1.9 billion in housing  
3 bonds. Because of the Tax Reform Act of 1986 at the federal  
4 level, there is a limit on how much we can allocate in bonds, so  
5 housing has to compete with public works and other projects for  
6 its share. So, we share Senator Petris' concern that he  
7 expressed earlier about how housing, particularly low and  
8 moderate income housing, gets allocated through that process.

9 We believe, because of the important position that the  
10 Treasurer plays in the area of housing, that it's important that  
11 he favor the primary purposes of the State's housing policies,  
12 which is to serve low and moderate income people.

13 The Treasurer is also a member of the Board of the  
14 California Housing Finance Agency. They are the nation's largest  
15 issuer of housing revenue bonds. In 1987 and '88, they issued  
16 over \$600 million in mortgage revenue bonds for specific single  
17 and multifamily housing developments, resulting in over 4,000  
18 housing units being built.

19 The Treasurer is Chair of the Mortgage Bond and Tax  
20 Credit Allocation Committee, which in 1987, allocated \$973  
21 million in bonds and tax credits for affordable housing  
22 developments.

23 The Treasurer also oversees the issuance of bonds for  
24 the new Roberti Housing and Homeless Bond Act, which was approved  
25 by the voters this last November in Proposition 84. That's a top  
26 priority of ours to ensure that the Treasurer aggressively  
27 carries out that program.  
28



1           Given these positions, and given the power to delay or  
2 reduce or prevent the implementation of bond programs, we again  
3 believe that it's very, very important for the State Treasurer to  
4 agree with the State's housing programs as they are set out in  
5 statute.

6           We strongly opposed the Governor's last nominee for  
7 Treasurer because we felt that he didn't believe that there was a  
8 legitimate State role in the area of affordable housing.

9           We're pleased that the Governor has come forth with a  
10 nominee this time that speaks more to competence rather than  
11 ideology.

12           We'll continue to work closely with the Governor's  
13 nominee, and look forward to continuing to monitor the agency to  
14 work closely with the nominee and address the very serious  
15 problems of homelessness and affordable housing that we have in  
16 this State.

17           Thank you very much.

18           CHAIRMAN ROBERTI: Thank you, Mr. Brown.

19           I guess the question of Mr. Hayes is, one concern we had  
20 with Congressman Lungren's confirmation was the use of excessive  
21 discretion in the issuance of bonds based on whether he was in  
22 favor or opposed to various programs. I guess the housing  
23 programs were the ones that came up the most.

24           I'll ask you a question. I hope the answer is the right  
25 one, but we hope you do not interject any ideological -- whether  
26 it's in our favor or against our favor -- in the issuance of  
27 bonds, and that you view it as an administrative act in which  
28 your discretion is to get the best deal for California.



1 MR. HAYES: Absolutely not. I would not insert my  
2 personal ideology.

3 I happen to support housing programs. The problem we in  
4 California have facing us, as well as the problem that other  
5 States as well have, is that the 1986 Federal Tax Law limited the  
6 amount of tax-free debt that a State can issue. It was a  
7 billion-nine last year; it's a billion-three this year, so it's  
8 dropping.

9 Hopefully, it'll stay at that level, but I want to tell  
10 you, while I was President of the National Association of State  
11 Auditors, Controllers and Treasurers, we dealt with a number of  
12 fiscal issues with the Congress, and the Congressional staff  
13 would, if they had their way, that would drop to nothing.

14 It's something we have to protect. As far as I'm  
15 concerned, it's a State's rights issue, tax-free debt. We did  
16 lose an important lawsuit, the State of South Carolina vs. Baker,  
17 this year, which attacked the federal government's ability to  
18 limit tax-free debt. The States lost; the federal government  
19 won, but we have to be very protective of our right to do that.

20 What I can pledge to you is that within that \$1.3  
21 billion allocation, I'll look at everything as fairly and as  
22 equitably as I can, and I will also follow the statutes and the  
23 will of the people to the utmost of my ability.

24 CHAIRMAN ROBERTI: Thank you very much, Mr. Hayes.

25 Thank you, Mr. Brown.

26 I have wishing to testify as well Mr. Ralph Morrell.  
27  
28





1 MR. MORRELL: Mr. President, Members of the Committee,  
2 I'd like to strongly recommend the confirmation of this nominee,  
3 and I presume that will not be a kiss of death.

4 CHAIRMAN ROBERTI: No.

5 MR. MORRELL: I hope there's enough statesmanship, I  
6 guess there is in this group, to --

7 CHAIRMAN ROBERTI: Every once in a while we even agree  
8 with you, Mr. Morrell.

9 MR. MORRELL: During the period -- this subject went to  
10 the rejection of Mr. Lungren as State Treasurer, numbers of names  
11 appeared in the newspaper, possible nominees. In each case, I  
12 would like you to know that I wrote Governor Deukmejian,  
13 recommending denial of those people as ineligible for nomination  
14 as a result of my perception of their performance in other  
15 offices of government. In each case, the Governor's appointment  
16 secretary acknowledged my recommendation.

17 Finally, it occurred to me that the performance of this  
18 nominee, Mr. Thomas Hayes, reveals that he has what the media has  
19 recently characterized as an exemplary record. On October 20th,  
20 1987, I wrote Governor Deukmejian, recommending appointment of  
21 Mr. Hayes, and this recommendation was also subsequently  
22 acknowledged. I am quite sure others made the same  
23 recommendation.

24 I do not know Mr. Hayes personally, but his  
25 recommendations in various Auditor General's reports clearly  
26 reveals that he is extremely well qualified, and I would combine  
27 the office with that of the State Controller if possible.  
28



1 I have no wish to embarrass this nominee, but in  
2 closing, it is my hope that the lower House, in fulfilling its  
3 new leaf that they're turning over, and this body as well, will  
4 not permit legislative claims to be submitted so that they  
5 ultimately end up on his desk and embarrass him.

6 Thank you.

7 CHAIRMAN ROBERTI: Thank you very much.

8 I think they ultimately end up on the Controller's desk;  
9 don't they?

10 We have Ms. Maura Kealey of the Service Employees,  
11 California State Council, who would like to testify.

12 MS. KEALEY: Thank you very much, Mr. Chairman and  
13 Members of the Committee.

14 Service Employees International Union represents 250,000  
15 California workers in the public and private sector.

16 We did oppose the last nomination, nominee, for this  
17 office because we did not believe that the office would be used  
18 in the best interests of our members.

19 We are here today to say that we find the information  
20 that we know about Mr. Hayes from his prior present position and  
21 the testimony very, very comforting and reassuring, that this  
22 would be a different situation.

23 But we want to draw particular attention to the issue of  
24 primary interest to our public sector members, and that is that  
25 the Treasurer sits as a member of the Public Employment  
26 Retirement Board and also a member of the State Teachers  
27 Retirement System Board. In this capacity, not only is the  
28



1 protection of our members' fiduciary interest in their retirement  
2 of utmost importance to us, and to believe that the members of  
3 that Board would have that primary duty of utmost important, but  
4 in addition, the way the monies are used, the way public and  
5 retirement funds are used, became a very important issue, and is  
6 today still a very important issue with what's going on on Wall  
7 Street and with the exposure to the stock market that we all  
8 have.

9 We would also say then, secondarily, that it's extremely  
10 important that the tradition of being a forceful advocate within  
11 the investment community for the public interest, and  
12 particularly the public interest in California as opposed to any  
13 private interests, is also of paramount consideration in that  
14 role.

15 So, we would like to bring those matters to the  
16 Committee's attention. And again, we are here this time not in  
17 opposition, but very, very concerned about how the office is  
18 used.

19 Thank you.

20 CHAIRMAN ROBERTI: Thank you very much.

21 Any other witnesses?

22 Mr. Hayes, you may conclude.

23 MR. HAYES: Mr. Chairman and Members, I think that I've  
24 demonstrated over the last ten years that I have the capability  
25 to be a good Treasurer. I think I've demonstrated over the last  
26 ten years that I have the capability to work cooperatively with  
27 the Legislature, both parties of the Legislature, and with the  
28 Governor, and I would ask for your support of my confirmation.





1 CHAIRMAN ROBERTI: Thank you.

2 Any questions or observations from the Members?

3 I would like to make a point that I feel your  
4 qualifications are outstanding for this job. I intend to vote  
5 for your confirmation.

6 This does not mean that, come election time, I won't  
7 feel that there's a Democrat who's more qualified than you are,  
8 but that's not our job right now. Our job isn't to engage in  
9 comparison shopping.

10 It's our job right now to make a determination whether  
11 the appointee who has been selected by the Governor has the  
12 qualifications and the character to assume this position, and  
13 clearly, Mr. Hayes does.

14 I'm very happy, I might add, that after this long battle  
15 for a confirmation, it appears that we have obtained for the  
16 State of California a fine Treasurer who is geared toward the  
17 requisites of the job and not necessarily geared toward ideology.  
18 That, frankly, is what we had requested early on when the initial  
19 appointment was made. I'm very happy that the Governor has made  
20 this kind of appointment, specifically of Mr. Hayes.

21 But come election time, who knows? There's no crime in  
22 having two people who are qualified and running for the same job.

23 Do I hear a motion?

24 SENATOR CRAVEN: Move the confirmation of Thomas W.  
25 Hayes as Treasurer of the State of California.

26 CHAIRMAN ROBERTI: Senator Craven has moved confirmation  
27 of Mr. Hayes to the Floor.  
28



1 Senator Mello.

2 SENATOR MELLO: Thank you. I was tied up with some  
3 other duty.

4 I do plan, and have told Mr. Hayes, that I do support  
5 his confirmation and will vote for him.

6 I want to ask you a couple questions. You were kind  
7 enough to call me the other day, and we did have some chance to  
8 discuss this position.

9 You stated to me on the phone that you look at the  
10 Treasurer's Office as really a nonpartisan office.

11 MR. HAYES: I think what I said is that it should be run  
12 in a nonpartisan way. Certainly, the Treasurer has to go out and  
13 run for election, but my approach to the Treasurer's Office will  
14 be what's best for the citizens of the State. That's a  
15 nonpartisan issue because there's Republicans and Democrats that  
16 are going to be the beneficiary of a good Treasurer's Office.

17 SENATOR MELLO: As I understand, your present  
18 registration is that you are registered as an Independent?

19 MR. HAYES: I'm registered as a Decline to State, and I  
20 remain Decline to State until the day that I am sworn in as  
21 Treasurer.

22 SENATOR MELLO: And then what will happen?

23 MR. HAYES: I'll register Republican.

24 SENATOR MELLO: I guess you're planning to be seeking  
25 reelection?

26 MR. HAYES: Yes, I will seek reelection in 1990,  
27 Senator.

28



1 MR. HAYES: I'm not prepared to say at this time,  
2 Senator.

3 SENATOR MELLO: Do you envision her not being a part of  
4 your team?

5 MR. HAYES: I'm not prepared to say at this time.

6 I will have my own team. I need to -- everybody has  
7 their own style. Jesse Unruh had his own style, and I'll have my  
8 own style. I'm going to surround myself with people that share  
9 my style.

10 SENATOR MELLO: So I take it from that reply, just  
11 trying to read between the lines, that you do not foresee any  
12 role that she may have in any future assistance in the office  
13 there, would you?

14 MR. HAYES: I can't say finally at this time exactly  
15 what I will do during the transition period.

16 Quite frankly, I've been concentrating my efforts on  
17 trying to get prepared for confirmation and not on what will  
18 happen the day that I'm sworn in.

19 SENATOR MELLO: I was trying to read your lips.

20 (Laughter.)

21 CHAIRMAN ROBERTI: I share your feelings about Ms.  
22 Whitney, Senator. I think she's been an outstanding Treasurer  
23 and has done an excellent job, performing the duties of her  
24 office responsibly and well for the people of California.  
25 There's nobody whom I think is more qualified to hold this  
26 position.





1           SENATOR MELLO: One of the things that comes to mind, of  
2 course, I think the former Treasurer, Jesse Unruh, did a  
3 tremendous job in really strengthening the role of the Treasurer  
4 in that office. When his untimely death came about, many of us  
5 were concerned, because it has taken a long time in getting a  
6 replacement confirmed. I just had some serious doubts about what  
7 would happen to the Treasurer's Office.

8           One person there, Elizabeth Whitney, who was the  
9 Assistant, I think has done just a tremendous job over the last  
10 time since the Treasurer passed away. In fact, she was able to  
11 handle the tremendous reinvestment job and keep the office  
12 running, I think, in a very fine manner.

13           Now you'll be stepping into the job as the new  
14 Treasurer, of course, and you have the responsibility of being  
15 the Treasurer. My question is: is there any plan for you, in  
16 trying to maintain this continuity, that Elizabeth Whitney might  
17 be able to stay on in order to help you during this transition  
18 period and help maintain continuity of service in the Treasurer's  
19 Office? Her expertise, of course, could be used during this  
20 period of time.

21           MR. HAYES: Mr. Chairman -- Senator Mello, excuse me, I  
22 haven't finalized my personnel decisions yet. I plan on bringing  
23 in my own team, but I haven't finalized what that will be or the  
24 timing of it at this point.

25           SENATOR MELLO: Do you think you would envision her  
26 being a part of your team?

27  
28



1 I don't know, frankly, if she would want to necessarily  
2 carry over.

3 SENATOR MELLO: I don't know that, either, but I just  
4 think that bringing in a new team, as Mr. Hayes will be bringing  
5 in, I was just seeing whether or not she had any -- it's always  
6 good to have a transition and have people very knowledgeable.  
7 This is a very complex office that has a tremendous  
8 responsibility in the management of large amounts of funds.

9 I just think she has this exceptional and very unique  
10 talent that could be used. I don't know whether she'd be willing  
11 to carry on, either, but I was just sort of seeing whether or not  
12 he would be willing to utilize her services, if she would be  
13 willing to continue serving.

14 But I understand your response, and I think that's your  
15 on prerogative, and I respect you for it.

16 I'm looking forward to working with you as Treasurer. I  
17 do hope that you will, as you state, look at the role of  
18 Treasurer as really a technician's job of managing money and keep  
19 it as less partisan as possible and become a good manager of the  
20 public funds.

21 MR. HAYES: Senator, the policy decisions, to a large  
22 degree, are made by the Legislature and the Governor. I plan on  
23 working closely with the Legislature and the Governor in those  
24 decisions that have an impact on the Treasurer's Office.

25 SENATOR MELLO: Thank you.

26 SENATOR CRAVEN: Call for the question.  
27  
28



1 CHAIRMAN ROBERTI: Senator Craven calls for the  
2 question. The motion has been put. The Secretary will call the  
3 roll.

4 SECRETARY WEBB: Senator Beverly.

5 SENATOR BEVERLY: Aye.

6 SECRETARY WEBB: Senator Mello.

7 SENATOR MELLO: Aye.

8 SECRETARY WEBB: Senator Petris.

9 SENATOR PETRIS: Aye.

10 SECRETARY WEBB: Senator Craven.

11 SENATOR CRAVEN: Aye.

12 SECRETARY WEBB: Senator Roberti.

13 CHAIRMAN ROBERTI: Aye.

14 The vote is five to nothing; confirmation is recommended  
15 to the Floor.

16 Congratulations.

17 MR. HAYES: Thank you, Senator.

18 (Thereupon this portion of the  
19 Senate Rules Committee hearing  
20 was terminated at approximately  
21 11:45 A.M.)

22 --oo0oo--  
23  
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CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this  
7<sup>th</sup> day of December, 1988.

  
EVELYN MIZAK  
Shorthand Reporter

















